

TOHONO O'ODHAM SETTLEMENT AGREEMENT

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AGREEMENT

THIS AGREEMENT dated April 30th, 2003 is entered into among the United States, the State of Arizona, the Tohono O'odham Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Co., and two plaintiff classes of Allottees and Fee Owners of Allotted Land (each class is referred to as an "Allottee Class") in the Consolidated Litigation.

1. RECITALS

1.1. Proceedings to determine the nature and extent of the rights to water of the Nation, allottees, the United States and other claimants are pending in the Gila River Adjudication Proceedings.

1.2. Recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all parties, the Tohono O'odham Nation, its neighboring non-Indian communities and others have agreed to settle permanently the disputes as provided in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this settlement.

1.3. In keeping with its trust responsibility to Indian tribes and to promote tribal sovereignty and economic self-sufficiency, it is the policy of the United States to settle whenever possible water rights claims of Indian tribes without lengthy and costly litigation.

1.4. A chronology of events leading up to this Agreement can be found in Exhibit 1.4.

NOW, THEREFORE, the Parties agree as follows:

2. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

2.1. "Acre-foot" means the quantity of water necessary to cover one acre of land to a depth of one foot.

2.2. "Act" means the Arizona Water Settlements Act of 2003.

2.3. "Adams Case" means *Adams v. United States* (Civ. No. 93-240 TUC FRZ (D. Ariz., filed January 25, 1993)).

2.4. "*Adams v. United States* Plaintiffs" means the plaintiffs in the Adams Case.

2.5. "After-Acquired Trust Land" means land that is located within the State, but outside the exterior boundaries of the Nation's Reservation, and is taken into trust by the United States for the benefit of the Nation after the Enforceability Date.

2.6. "Agreement" means this Agreement and the exhibits attached hereto.

2.7. "Agreement of December 11, 1980" means the contract for delivery of CAP water entered into by the United States and the Nation on December 11, 1980.

2.8. "Agreement of October 11, 1983" means the contract for the provision of water and the settlement of claims to water under the 1982 Act entered into by the United States and the Nation on October 11, 1983.

2.9. "Allottee" means a person that holds a beneficial real property interest in an Indian allotment that is located within the San Xavier Reservation and is held in trust by the United States.

2.10. "Allottee Class" means an applicable plaintiff class certified by the court of jurisdiction in the Alvarez Case or the Tucson Case.

2.11. "Alvarez Case" means the first through third causes of action of the third amended complaint in *Alvarez v. City of Tucson* (Civ. No. 93-039 TUC FRZ (D. Ariz., filed April 21, 1993)).

2.12. "*Alvarez v. Tucson* Named Plaintiff Allottees" means the Allottees who are named plaintiffs in the Alvarez Case.

2.13. "*Alvarez v. Tucson* Plaintiff Class" means a class of plaintiff Allottees certified for the first through third causes of action in the Alvarez Case.

2.14. "Applicable Law" means any applicable federal, State, tribal, or local law.

2.15. "Arizona Department of Water Resources" or "ADWR" means the entity established pursuant to Title 45 of the Arizona Revised Statutes, or its successor agency or entity.

2.16. "Arizona Water Banking Authority" means the entity established pursuant to Chapter 14 of Title 45 of the Arizona Revised Statutes, or its successor agency or entity.

2.17. "Asarco" means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries conducting mining operations in the State.

2.18. "Asarco Agreement" means the agreement by that name attached to this Agreement as Exhibit 13.1.

2.19. "Available CAP Supply" means for any given Year any Fourth Priority Water available for delivery through the CAP System, water available from CAP dams

and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

2.20. "CAP" means the Central Arizona Project, the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

2.21. "CAP Contract" means a long term contract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for delivery of water through the CAP System.

2.22. "CAP Contractor" means any person or entity having a CAP Contract.

2.23. "CAP Indian Irrigation Water" means water allocated as Indian irrigation water pursuant to the Secretarial Record of Decision of March 24, 1983 published in the Federal Register at volume 48, number 58, pages 12446 through 12452.

2.24. "CAP Indian Priority Water" means that water having an Indian delivery priority as described in paragraph 5.3.

2.25. "CAP Link Pipeline" means the pipeline extending from the Tucson Aqueduct of the CAP to a point within the Cooperative Farm.

2.26. "CAP M&I Priority Water" means that water having a municipal and industrial delivery priority as described in paragraph 5.3.

2.27. "CAP NIA Priority Water" means that water having a non-Indian agricultural delivery priority as described in paragraph 5.3.

2.28. "CAP Operating Agency" means the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of the date of this Agreement, CAWCD is the CAP Operating Agency.

2.29. "CAP Repayment Contract" means the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1) between the United States and the CAWCD for the delivery of water and the repayment of costs of the CAP, including all amendments to and revisions of that contract.

2.30. "CAP Repayment Stipulation" means the "Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions," filed with the United States District Court for the District of Arizona on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB(EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action), including all amendments to and revisions of that Stipulation.

2.31. "CAP Service Area" means the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the CAWCD delivers CAP water; and any expansion of that area under Applicable Law.

2.32. "CAP Subcontract" means a long term subcontract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for delivery of water through the CAP System.

2.33. "CAP Subcontractor" means any person or entity having a CAP subcontract.

2.34. "CAP System" means the Mark Wilmer Pumping Plant, the Hayden-Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, and associated pumping plants, and appurtenant works of the Central Arizona Project aqueduct system and any extensions, additions thereto, or replacement features thereof.

2.35. "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State that is the contractor under the CAP repayment contract.

2.36. "Community" means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

2.37. "Consolidated Litigation" means the consolidated Tucson Case, Alvarez Case and Adams Case.

2.38. "Cooperative Farm" means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c) of the SAWRSA Amendments.

2.39. "Cooperative Fund" means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310 of the SAWRSA Amendments.

2.40. "Deferred Pumping Storage Credit" means a pumping credit recoverable as authorized by section 308(f)(1)(B) of the Act and accounted for under paragraph 8.6.2 of this Agreement.

2.41. "Deficiency Year" means a Year in which the Secretary is unable to fulfill the obligations of the Secretary under sections 304(a) and 306(a) of the SAWRSA Amendments.

2.42. "Delivery And Distribution System" means the CAP aqueduct, the CAP Link Pipeline and the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water from the CAP, including pumping facilities, power plants, and electric power transmission facilities, that are external to the boundaries of any farm to which the water is distributed.

2.43. "Direct Storage and Recovery Project" means a facility that uses CAP water or effluent for underground storage or that recovers stored water.

2.44. "eastern Schuk Toak District" means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson Management Area.

2.45. "eastern Schuk Toak District Maximum Demand" means the largest total quantity of water (i) delivered by the Secretary to the eastern Schuk Toak District for any use (other than direct groundwater recharge) and (ii) pumped from groundwater for beneficial use in the eastern Schuk Toak District, during any of the five most recent Years that are not Deficiency Years (exclusive of water pumped from Exempt Wells).

2.46. "Enforceability Date" means the date on which the SAWRSA Amendments become effective.

2.47. "Exempt Well" means a water well, the maximum pumping capacity of which is not more than 35 gallons per minute that provides water which is used for the supply, service, or activities of households or private residences; or landscaping; or livestock watering; or the irrigation of not more than two acres of land for the production of one or more agricultural or other commodities for sale; or human consumption; or use as feed for livestock or poultry.

2.48. "Fee Owner of Allotted Land" means a person that holds fee simple title in real property on the San Xavier Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

2.49. "Fourth Priority Water" means Colorado River water available for delivery within the State for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights and other arrangements between the United States and water users in the State entered into or established subsequent to September 30, 1968 for use on federal, State or privately owned lands (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2), after first providing for delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Master Repayment Contract for the delivery of Colorado River water for the Central Arizona Project, including use of Colorado River water on Indian lands.

2.50. "Gila River Adjudication Court" means the Superior Court of the State of Arizona in and for the county of Maricopa exercising jurisdiction over the Gila River Adjudication Proceedings.

2.51. "Gila River Adjudication Proceedings" means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source*, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).

2.52. "Indian Tribe" means that term as used in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

2.53. "Injury To Water Quality" means any contamination, diminution, or deprivation of water quality under Applicable Law.

2.54. "Injury To Water Rights" means any interference with, diminution of, or deprivation of water rights under Applicable Law, including a change in the underground

water table and any effect of such a change, but excluding Subsidence Damage or Injury to Water Quality.

2.55. "Interim Allottee Water Rights Code" means the code described in section 308(b) of the SAWRSA Amendments.

2.56. "Irrigation System" means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm, including, with respect to the Cooperative Farm, activities, procedures, works, and devices for rehabilitation of fields; remediation of sinkholes, sinks, depressions, and fissures; and stabilization of the banks of the Santa Cruz River.

2.57. "Lower Colorado River Basin Development Fund" means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

2.58. "Marketable Credit" means a storage credit that can be transferred for use outside the Nation's Reservation if the transfer is authorized by State law.

2.59. "Nation" means the Tohono O'odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

2.60. "Nation's Reservation" means all land within the exterior boundaries of (A) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267); (B) the San Xavier Reservation established by the Executive order of July 1, 1874; (C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by Executive order of June 17, 1909; (D) the Florence Village established by Public Law 95-361 (92 Stat. 595); (E) all land acquired in accordance with the Gila Bend

Indian Reservation Lands Replacement Act (100 Stat. 1798) if title to the land is held in trust by the Secretary for the benefit of the Nation; and all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable federal law before the Enforceability Date.

2.61. "Net Irrigable Acres" means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation.

2.62. "Non-Exempt Well" means any well that is not an Exempt Well.

2.63. "Party" means any signatory to this Agreement; the State's participation as a Party shall be as described in paragraph 18.4.

2.64. "Qualified Entity" means any CAP Contractor or CAP Subcontractor within the Tucson Management Area, any municipal provider that has a member service area in the Central Arizona Groundwater Replenishment District within the Tucson Management Area, or any other entity that agrees to use the leased water within the Tucson Management Area and demonstrates the financial and physical ability to utilize that water.

2.65. "San Xavier Allottees Association" means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of Allottees .

2.66. "San Xavier Cooperative Association" means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the Cooperative Farm.

2.67. “San Xavier District” means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

2.68. “San Xavier District Council” means the governing body of the San Xavier District, as established under the constitution of the Nation.

2.69. “San Xavier District Maximum Demand” means the largest total quantity of water (i) delivered by the Secretary to the Reservation for any use (other than direct groundwater recharge or use by Asarco), and (ii) pumped from groundwater for beneficial use on the Reservation, during any one of the five most recent Years that are not Deficiency Years (exclusive of water pumped from Exempt Wells).

2.70. “San Xavier Reservation” means the San Xavier Indian Reservation established by the Executive Order of July 1, 1874.

2.71. “SAWRSA Amendments” means the Southern Arizona Water Rights Settlement Amendments Act of 2003.

2.72. “Schuk Toak Farm” means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4) of the SAWRSA Amendments.

2.73. “Secretary” means the Secretary of the Interior.

2.74. “State” means the State of Arizona.

2.75. “Subjugate” means to prepare land for an agricultural use through irrigation.

2.76. “Subsidence Damage” means injury to land, water or other real property, resulting from the settling of geologic strata or cracking in the surface of the Earth at any length or depth, which settling or cracking is caused by the pumping of water.

2.77. "Surface Water" means all water that is appropriable under State law.

2.78. "Transaction Date" means the date designated by the Nation on which the Nation intends to enter into a sale, assignment, exchange, lease, option to lease or other disposal of water pursuant to section 309(c) of the SAWRSA Amendments.

2.79. "Tucson Case" means *United States et al. v. City of Tucson, et al.* (Civ. No. 75-39 TUC consol. with Civ. No. 75-51 TUC FRZ (D. Ariz., filed February 20, 1975)).

2.80. "Tucson Interim Water Lease" means the lease, and any amendments and extensions of the lease, between the City of Tucson, Arizona, and the Nation, dated October 24, 1992.

2.81. "Tucson Management Area" means the area in the State comprised of the area designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and the portion of the Upper Santa Cruz Basin that is not located within either of these areas.

2.82. "Turnout" means a point of water delivery on the CAP aqueduct.

2.83. "Underground Storage" means storage of water accomplished under a project authorized under section 308(e) of the SAWRSA Amendments.

2.84. "United States as Trustee" means the United States, acting on behalf of the Nation and Allottees, but in no other capacity.

2.85. "*United States v. Tucson* Named Plaintiff Allottees" means the Allottees who are named plaintiffs in the Tucson Case.

2.86. “*United States v. Tucson Plaintiff Class*” means a class of plaintiff Allottees certified in the Tucson Case.

2.87. “Value” means the value attributed to water based on the greater of (i) the anticipated or actual use of the water; or (ii) the fair market value of the water.

2.88. “Water Code” means the comprehensive water code described in section 308(b) of the SAWRSA Amendments.

2.89. “Water Right” means any right in or to groundwater, Surface Water, or effluent under Applicable Law.

2.90. “Year” means a calendar year; when not capitalized, the term “year” shall have the meaning set forth in the paragraph in which the term is used.

2.91. “1982 Act” means the Southern Arizona Water Rights Settlement Act (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the Enforceability Date.

3. EXHIBITS

3.1. The following is a list of Exhibits attached to this Agreement:

3.2	<u>Exhibit/Paragraph No.</u>	<u>Description of the Exhibit</u>
	1.4	A Chronology of Events Leading up to the Tohono O’odham Settlement Agreement
	5.2	The Tohono O’odham Nation’s CAP Contract, as amended under this Agreement
	5.3.4.1	Secretary’s Shortage Sharing Approach Under the 1980 Contract
	8.6	Storage Account Form
	8.7	Examples of Calculations for Additional Groundwater Pumping
	8.8	Concept for Groundwater Protection Program
	11.3	Standard Form of CAP Subcontract for CAP M&I Use

3.2	<u>Exhibit/Paragraph No.</u>	<u>Description of the Exhibit</u>
	12.1	Tucson Agreement
	13.1	Asarco Agreement
	14.1	FICO Agreement
	16.2	Stipulation and Form of Conditional Order of Dismissal with Prejudice
	17.1	Stipulation and Form of Judgment by Gila River Adjudication Court

4. NATION'S WATER RIGHTS

4.1. The Nation shall have the following rights to water in the Tucson Management Area, which shall be held in trust by the United States on behalf of the Nation and the Allottees :

<u>SOURCE</u>	<u>AMOUNT</u>	<u>REFERENCE</u>
<u>Underground water</u>	<u>13,200 Acre-feet/yr*</u>	
San Xavier Reservation	10,000 Acre-feet/yr*	Paragraph 8.1.1
eastern Schuk Toak District	3,200 Acre-feet/yr*	Paragraph 8.1.2
<u>Total CAP Indian Homeland Water</u>		
<u>Currently Under Contract</u>	<u>37,800 Acre-feet/yr</u>	
San Xavier Reservation	27,000 Acre-feet/yr	Paragraph 5.1.1.1
eastern Schuk Toak District	10,800 Acre-feet/yr	Paragraph 5.1.1.2
<u>Total New CAP NIA Priority Water</u>	<u>28,200 Acre-feet/yr</u>	
San Xavier Reservation	23,000 Acre-feet/yr	Paragraph 5.1.2.1
eastern Schuk Toak District	5,200 Acre-feet/yr	Paragraph 5.1.2.2
TOTAL	79,200 Acre-feet/yr*	

*The availability of groundwater is subject to the provisions of paragraph 8.6.

4.2. The Nation may use water listed in paragraph 4.1 for any use.

4.3. Except as provided in Section 309(b)(1)(C) of the SAWRSA Amendments, the Nation may use water listed in paragraph 4.1 at any location within the Nation's Reservation.

4.4. The Nation may use water listed in paragraph 4.1 outside the Nation's Reservation and within the State as follows:

4.4.1. Groundwater supplies may be used pursuant to the Asarco Agreement;

4.4.2. CAP water may be used within the CAP service area; and

4.4.3. Water derived from Marketable Credits may be used only in accordance with State law.

4.5. No CAP water may be leased, exchanged, forborne or otherwise transferred by the Nation for any direct or indirect use outside the State.

5. WATER DELIVERY

5.1. The Secretary's Obligation to Acquire and Deliver Water.

5.1.1. Pursuant to section 304(a) of the SAWRSA Amendments and the Agreement of December 11, 1980, as amended, and this Agreement, the Secretary shall deliver 37,800 Acre-feet per Year of CAP water suitable for agriculture to the Cooperative Farm and the eastern Schuk Toak District Turnouts and to any other point of delivery agreed to by the Secretary and the Nation, of which:

5.1.1.1. 27,000 Acre-feet per Year shall be deliverable to the San Xavier Reservation or in accordance with section 309 of the SAWRSA Amendments; and

5.1.1.2. 10,800 Acre-feet per Year shall be deliverable to the eastern Schuk Toak District or in accordance with section 309 of the SAWRSA Amendments.

5.1.2. Pursuant to section 306(a) of the SAWRSA Amendments, the Secretary shall deliver 28,200 Acre-feet per Year of CAP NIA Priority Water suitable for agriculture to the Cooperative Farm and the eastern Schuk Toak District Turnouts and to any other point of delivery agreed to by the Secretary, CAWCD and the Nation, of which:

5.1.2.1. 23,000 Acre-feet per Year shall be deliverable to the San Xavier Reservation or in accordance with section 309 of the SAWRSA Amendments; and

5.1.2.2. 5,200 Acre-feet per Year shall be deliverable to the eastern Schuk Toak District or in accordance with section 309 of the SAWRSA Amendments.

5.1.3. Pursuant to section 305 of the SAWRSA Amendments, the Secretary shall deliver the 66,000 Acre-feet per Year of CAP water described above, or an equivalent quantity of water from a source identified in section 305(b)(1) of the SAWRSA Amendments, notwithstanding any declaration by the Secretary of a water shortage on the Colorado River or any other occurrence described in section 305(a)(2)(B) of the SAWRSA Amendments.

5.1.4. In accordance with the provisions of section 305(d) of the SAWRSA Amendments, the Secretary shall provide compensation if the Secretary is

unable to acquire and deliver sufficient quantities of water under sections 304(a) and 306(a) of the SAWRSA Amendments.

5.2. CAP Contract Amendments. The Nation's CAP Contract shall be amended to conform to the provisions of section 309(g) of the SAWRSA Amendments. The form of the Nation's CAP contract as amended is set forth in Exhibit 5.2.

5.3. Shortage Sharing Criteria

5.3.1. On or before June 1 of each Year beginning in the Year following the Year in which the Enforceability Date occurs, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor.

5.3.1.1. Prior to January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements set forth in paragraphs 5.3.1.1.1 through 5.3.1.1.3 below:

5.3.1.1.1. Three hundred forty-three thousand seventy-nine (343,079) Acre-feet of CAP Indian Priority Water;

5.3.1.1.2. Six hundred thirty-eight thousand eight hundred twenty-three (638,823) Acre-feet of CAP M&I Priority Water; and

5.3.1.1.3. Up to one hundred eighteen (118) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

5.3.1.2. On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in paragraphs 5.3.1.2.1 through 5.3.1.2.4 below:

5.3.1.2.1. Three hundred forty-three thousand seventy-nine (343,079) Acre-feet of CAP Indian Priority Water;

5.3.1.2.2. Six hundred thirty-eight thousand eight hundred twenty-three (638,823) Acre-feet of CAP M&I Priority Water;

5.3.1.2.3. Up to forty-seven thousand three hundred three (47,303) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and

5.3.1.2.4. Up to one hundred eighteen (118) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

5.3.2. Initial Distribution of Water in Time of Shortage.

5.3.2.1. If the Available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

5.3.2.2. If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

Where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraphs 5.3.1.1 or 5.3.1.2, whichever is applicable; and
W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraph 5.3.1.1 were nine hundred eighty-one thousand nine hundred two (981,902) Acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) Acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraph 5.3.1.2 were one million twenty-nine thousand three hundred twenty-three (1,029,323) Acre-feet (343,079 + 638,823 + 43,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) Acre-feet plus 18.59354% of the Available CAP Supply.

5.3.3. Redistribution of Unscheduled Water in Time of Shortage.

In time of shortage unscheduled CAP Water shall be distributed as follows:

5.3.3.1. Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

5.3.3.2. CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the Operating Agency in consultation with CAP M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

5.3.3.3. Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

5.3.3.4. Nothing in this paragraph 5.3 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such CAP contractor's entitlement.

5.3.4. Distribution of CAP Indian Priority Water among CAP Indian Priority Water Users.

5.3.4.1. In consideration of the agreement by the Community to incur additional shortages beyond those that it would have incurred under the approach described in Exhibit 5.3.4.1, the Secretary shall first make available to the Community any water made available for delivery as CAP Indian Priority Water under paragraph 5.3.3.2, to the extent necessary in any Year, to offset the additional shortages borne by the Community. After the additional shortages borne by the Community have been fully offset, the Secretary shall then make any remaining water available in accordance with all CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water in proportion to their contractual entitlements to CAP Indian Priority Water.

5.3.4.2. If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet but less than the sum of the entitlements described in paragraphs 5.3.2.1 or 5.3.2.2, as applicable, then, to the extent that sufficient quantities of CAP water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with paragraph 5.3.3.2, are not available to meet orders for CAP Indian Priority Water, the Nation shall incur the

portion of such shortage of CAP Indian Priority Water determined under the formula stated in Exhibit 5.3.4.1.

5.3.4.3. If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) Acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, up to fifty-one thousand five hundred five (51,505) Acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima-Maricopa Indian Community, the Nation and the San Carlos Apache Tribe. During a time of shortage described in this paragraph 5.3.4.3, the CAP Indian Priority Water available to the Nation shall be determined pursuant to the formula attached as Exhibit 5.3.4.1, and the CAP Indian Priority Water available to the tribes referenced above, other than the Community and the Nation, shall be determined in accordance with the provisions of their respective CAP Contracts and any amendments thereto.

5.3.4.4. If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) Acre-feet, then the CAP Indian Priority Water determined to be available pursuant to paragraph 5.3.2.1 shall be distributed to the Nation by the Secretary based on the ratio of the amount of water delivered pursuant to the Nation's CAP Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. However, if during the last non-shortage Year the Nation had not completed construction of the distribution system necessary to take and use its CAP entitlement, the Secretary will impute in the calculation the quantity of CAP water that the Nation would have been expected to take had the distribution system, as it exists at

the time of the shortage, been in place during such non-shortage Year. For example, if the Secretary determines that: (1) in the last non-shortage Year the Nation used only fifteen thousand (15,000) Acre-feet of its entitlement because the Nation's CAP distribution system was only partially completed and would permit the delivery of only fifteen thousand (15,000) Acre-feet of its entitlement; (2) as of the then current Year, additional construction of the Nation's CAP distribution system has been completed; and (3) the Nation can take and use, and has ordered for delivery, thirty thousand (30,000) Acre-feet of CAP water; then the Secretary shall use an imputed quantity of thirty thousand (30,000) Acre-feet for the Nation when pro-rating the available water supply among the CAP Contractors for CAP Indian Priority Water.

5.3.4.5. If any Indian Tribe, other than the Community and the Nation, enters into a new contract or amends the term or quantity of water in an existing contract for the delivery or exchange of CAP water, then the Secretary shall require such Indian tribe to include in such new contract or amendment, a provision to share, on a proportional basis¹ with the Community and the Nation, the additional shortage that the Community and Nation are bearing pursuant to paragraphs 5.3.4.2 and 5.3.4.3; provided, however, that no tribe shall bear more shortage than it would have borne under its existing contract at a CAP water supply of 801,574 acre-feet. In that event, the Nation

1. The proportion shall be based on a ratio with the numerator being the amount of such tribe's entitlement to CAP Indian Irrigation Water and the denominator being the sum of the amounts of all tribes' entitlements to CAP Indian Irrigation Water.

and the Secretary shall modify the Nation's CAP Contract to reflect such sharing of shortages by the other Indian tribes.

5.4. Distribution of CAP NIA Priority Water. If the available CAP Supply is insufficient to meet the fixed quantity water service contracts or subcontracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the CAP NIA Priority water to the CAP Contractors and CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA priority water used by each such CAP Contractor or CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA priority water. However, if during the last such Year the Nation had not completed construction of the distribution system necessary to take and use its entire entitlement to CAP NIA Priority Water, the Secretary shall impute in the calculation the quantity of CAP NIA Priority Water that the Nation would have been expected to take had the distribution system, as it exists in the then current Year, been in place during the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water.

5.5. The Secretary and the CAP Operating Agency shall not unreasonably withhold permission or authorization to construct Turnouts on the CAP System to deliver the Nation's CAP water that are necessary for the Nation either to use its water on or off the Nation's Reservation or to implement leases of or options to lease, exchanges or options to exchange the Nation's CAP water.

5.6. Pursuant to section 314(a) of the SAWRSA Amendments, for purposes of determining the allocation and repayment of costs of any stages of the CAP hereafter constructed, the costs associated with the delivery of the Nation's CAP water, whether

such water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease, exchanges or options to exchange the Nation's CAP water entered into by the Nation shall be nonreimbursable, and such costs shall not be included in the CAWCD's repayment obligation.

5.7. Pursuant to section 314(b) of the SAWRSA Amendments, the costs associated with the construction of the CAP shall be nonreimbursable by the Nation and CAP water service capital charges shall be due or payable for the Nation's CAP water, whether such water is delivered for use by the Nation or is delivered pursuant to any leases of or options to lease, exchanges or options to exchange the Nation's CAP water.

5.8. The Nation shall be entitled to enter into contracts for excess CAP water as provided in the CAP Repayment Stipulation.

5.9. Nothing in this Agreement shall be construed as a limitation on the Nation's ability to enter into any agreement with the Arizona Water Banking Authority, or its successor agency or entity, in accordance with State law.

5.10. Firming.

5.10.1. The Secretary shall firm 28,200 Acre-feet per Year of CAP NIA Priority Water for the benefit of the Nation, to the equivalent of CAP M&I Priority Water for a period of 100 Years after the Enforceability Date, as provided in section 105 of the Act.

5.10.2. The State shall assist the Secretary in firming the 28,200 Acre-feet as provided in section 306(b) of the SAWRSA Amendments.

6. DESIGN AND CONSTRUCTION OF FACILITIES

6.1. The Secretary shall (without cost to the Nation, any Allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the CAP, design and construct the Delivery and Distribution System necessary to deliver the water described in paragraph 5.1.

6.2. Pursuant to sections 304(b) and (c) of the SAWRSA Amendments, the Secretary shall complete:

6.2.1. Not later than eight years after the Enforceability Date, the improvements to the irrigation systems that serve the Cooperative Farm and the extension to the Cooperative Farm. On completion of the extension, the extended Cooperative Farm irrigation system shall serve 2,300 Net Irrigable Acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree to fewer Net Irrigable Acres.

6.2.2. Not later than one year after the Enforceability Date, the design and construction of an irrigation system and Delivery and Distribution System to serve the farm in the eastern Schuk Toak District.

6.3. Pursuant to the provisions of section 304(d) of the SAWRSA Amendments, the Secretary may extend a deadline referred to in paragraphs 6.2.1 and 6.2.2. If the Secretary extends a deadline, the Secretary shall comply with the notice provision of section 304(d)(2) of the SAWRSA Amendments.

7. NEW FARM PROVISIONS

7.1. In accordance with section 304(c)(3) of the SAWRSA Amendments, and in accordance with paragraph 7.2, the Secretary shall either:

7.1.1. Pay to the San Xavier District \$18,300,000 in lieu of designing and constructing the canals, laterals, farm ditches and irrigation works for a new farm within the San Xavier Reservation; or

7.1.2. Design and construct additional canals, laterals, farm ditches, and irrigation works within a new Farm on the San Xavier Reservation as are necessary for the efficient distribution for agricultural purposes of the water to be used on that farm.

7.2. The San Xavier District Council may make a nonrevocable election whether to receive the benefits described under paragraphs 7.1.1 or 7.1.2 by notifying the Secretary after the Enforceability Date, but not later than 180 days thereafter, by written resolution of the San Xavier District Council. If the Secretary does not receive a written resolution prior to the 180th day after the Enforceability Date, the Secretary shall pay the \$18,300,000 to the San Xavier District in lieu of constructing the new farm.

7.2.1. Payment of the \$18,300,000 shall be made by the Secretary from the Lower Colorado River Basin Development Fund:

7.2.1.1. Within 60 days after the election described in paragraph 7.2, or

7.2.1.2. If no timely election is made, then within 240 days after the Enforceability Date.

7.2.2. Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches and irrigation works as described in section 304(c)(3)(A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if the election is to receive the benefits under paragraph 7.1.2.

7.3. Pursuant to section 304(f) of the SAWRSA Amendments, the San Xavier District Council shall hold the funds in trust in interest bearing deposits and securities and may expend the principal and interest in accordance with a budget authorized by the San Xavier District Council and approved by the Nation's Legislative Council.

8. USE OF PUMPED WATER

8.1. Right to Pump Groundwater. The Nation agrees, except as provided in sections 308(e), 308(f), 308(g) and 308(h) of the SAWRSA Amendments:

8.1.1. To limit the quantity of groundwater withdrawn by Non-Exempt Wells from beneath the San Xavier Reservation to not more than 10,000 Acre-feet per Year; and

8.1.2. To limit the quantity of groundwater withdrawn by Non-Exempt Wells from beneath the eastern Schuk Toak District to not more than 3,200 Acre-feet per Year.

8.2. Storage and Recovery Projects. Pursuant to section 308(e) of the SAWRSA Amendments, the Nation may establish and maintain one or more Direct Storage and Recovery Projects within the San Xavier Reservation or the eastern Schuk Toak District.

8.3. [Intentionally omitted.]

8.4. Allocation and Transfer of Storage Credits.

8.4.1. The Nation shall allocate as a first right of beneficial use by Allottees, the San Xavier District, and other persons within the San Xavier Reservation, the storage credits resulting from a project authorized in section 308(e) of the SAWRSA

Amendments that cannot be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation.

8.4.2. The Nation has the exclusive right, subject to section 308 of the SAWRSA Amendments, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation.

8.5. Deferred Pumping.

8.5.1. Pursuant to section 308(f)(1)(B) of the SAWRSA Amendments, within the San Xavier Reservation:

8.5.1.1. All or any portion of the 10,000 Acre-feet of water not pumped under paragraph 8.1.1 in any Year—

8.5.1.1.1. may be withdrawn in any subsequent Year;
and

8.5.1.1.2. shall be accounted for in accordance with
paragraph 8.6.

8.5.1.2. The quantity of water authorized to be recovered as Deferred Pumping Storage Credits under this section shall not exceed--

8.5.1.2.1. 50,000 Acre-feet for any ten-Year period; or

8.5.1.2.2. 10,000 Acre-feet in any year.

8.5.2. Pursuant to section 308(f)(2)(B) of the SAWRSA Amendments, within the eastern Schuk Toak District:

8.5.2.1. All or any portion of the 3,200 Acre-feet of water not pumped under paragraph 8.1.2 in any Year—

8.5.2.1.1. may be withdrawn in any subsequent Year;
and

8.5.2.1.2. shall be accounted for in accordance with
paragraph 8.6.

8.5.2.2. The quantity of water authorized to be recovered as
Deferred Pumping Storage Credits under this section shall not exceed--

8.5.2.2.1. 16,000 Acre-feet for any ten-Year period; or

8.5.2.2.2. 3,200 Acre-feet in any Year.

8.6. Accounting. Attached as Exhibit 8.6 is a form to maintain the Storage
Accounts.

8.6.1. Direct Storage Accounts.

8.6.1.1. For each Direct Storage and Recovery Project an
account shall be maintained to credit the quantities of water stored underground and to
debit the water recovered.

8.6.1.2. As of the end of the Year that includes the
Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.1.2.1. Credit the quantity of water stored
underground within the San Xavier Reservation and within the eastern Schuk Toak
District during the Year; and

8.6.1.3. Debit the quantity of water recovered from direct
storage or transferred as Marketable Credits during the Year.

8.6.2. Deferred Pumping Storage Accounts. Deferred pumping storage
accounts shall be established to credit the quantities of water stored underground in lieu

of pumping and to debit the water recovered. Such accounts shall be maintained as follows:

8.6.2.1. Within the San Xavier Reservation:

8.6.2.1.1. To initiate the account, the Nation shall credit 50,000 Acre-feet;

8.6.2.1.2. As of the end of the Year that includes the Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.2.1.2.1.1. If the quantity of groundwater withdrawn from all Non-Exempt Wells is less than 10,000 Acre-feet, credit to the account the difference between 10,000 Acre-feet and the quantity of groundwater withdrawn that Year by all Non-Exempt Wells; or

8.6.2.1.2.1.2. If the quantity of groundwater withdrawn from all Non-Exempt Wells is more than 10,000 Acre-feet, debit to the account the difference between the groundwater withdrawn from all Non-Exempt wells and 10,000 Acre-feet.

8.6.2.2. Within the eastern Schuk Toak District:

8.6.2.2.1. To initiate the account, the Nation shall credit 16,000 Acre-feet;

8.6.2.2.2. As of the end of the Year that includes the Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.2.2.2.1.1. If the quantity of groundwater withdrawn from all Non-Exempt Wells is less than 3,200 Acre-feet, credit to the account

the difference between 3,200 Acre-feet and the quantity of groundwater withdrawn that Year by all Non-Exempt Wells; or

8.6.2.2.2.1.2. If the quantity of groundwater withdrawn from all Non-Exempt Wells is more than 3,200 Acre-feet, debit to the account the difference between the groundwater withdrawn from all Non-Exempt wells and 3,200 Acre-feet.

8.7. Additional groundwater pumping. Pursuant to section 308(h) of the SAWRSA Amendments and subject to the conditions of this paragraph, in any Deficiency Year, the Nation may, for then existing beneficial uses on the San Xavier Reservation and within the eastern Schuk Toak District, respectively, pump an additional amount of groundwater. Examples of the calculations for additional groundwater pumping pursuant to this paragraph are provided in Exhibit 8.7.

8.7.1. With respect to the San Xavier Reservation, the additional amount may be equal to the San Xavier District Maximum Demand; less:

8.7.1.1. The quantity of water delivered by the Secretary to the Reservation during the Deficiency Year; and

8.7.1.2. 10,000 Acre-feet (the groundwater referred to in section 307(a)(1)(A) of the SAWRSA Amendments); and

8.7.1.3. All storage credits, except for Marketable Credits; and

8.7.1.4. All Deferred Pumping Storage Credits acquired pursuant to paragraph 8.5.

8.7.2. With respect to the eastern Schuk Toak District, the additional amount may be equal to the eastern Schuk Toak District Maximum Demand; less:

8.7.2.1. The quantity of water delivered to the eastern Schuk Toak District during the Deficiency Year; and

8.7.2.2. 3,200 Acre-feet (the groundwater referred to in section 307(a)(1)(B) of the SAWRSA Amendments); and

8.7.2.3. All storage credits, except for Marketable Credits; and

8.7.2.4. All Deferred Pumping Storage Credits acquired pursuant to paragraph 8.5.

8.7.3. The operation of this paragraph 8.7 shall be subject to the following conditions:

8.7.3.1. As to the San Xavier Reservation:

8.7.3.1.1. Deferred Pumping Storage Credits and storage credits referred to in paragraphs 8.7.1.3 and 8.7.1.4 shall be subtracted to determine the quantity of groundwater that may be pumped pursuant to paragraph 8.7.1 only to the extent that the total of such credits subtracted for any Year does not exceed 20% of the San Xavier District Maximum Demand; and

8.7.3.1.2. Deferred Pumping Storage Credits that are subtracted as required by this paragraph 8.7.3.1 shall be debited to the San Xavier Reservation account on a one-for-one basis without discount.

8.7.3.2. As to the eastern Schuk Toak District:

8.7.3.2.1. Deferred Pumping Storage Credits and storage credits referred to in paragraphs 8.7.1.3 and 8.7.1.4 shall be subtracted to determine the quantity of groundwater that may be pumped pursuant to paragraph 8.7.2 only to the

extent that the total of such credits subtracted for any Year does not exceed 20% of the eastern Schuk Toak District Maximum Demand; and

8.7.3.2.2. Deferred Pumping Storage Credits that are subtracted as required by this paragraph 8.7.3.2 shall be debited to the eastern Schuk Toak account on a one-for-one basis without discount.

8.8. Groundwater Protection Program. The Parties agree to support the enactment of legislation by the State that would implement the groundwater protection program for the San Xavier Reservation as described in Exhibit 8.8.

8.9. Consistent with § 308(f)(3)(B) of the SAWRSA Amendments, the United States and the Nation agree not to assert a reserved right claim for groundwater for the San Xavier District or the eastern Schuk Toak District portion of the Schuk Toak District.

8.10. Exempt Wells may be drilled on the San Xavier Reservation and the eastern Schuk Toak District and their use shall be exempt from pumping limitations in the SAWRSA Amendments and this Agreement.

9. WATER MANAGEMENT PLANS

9.1. Pursuant to section 308(d) of the SAWRSA Amendments, the Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans under contracts executed under section 311 of the SAWRSA Amendments between the Secretary and the San Xavier District for the San Xavier Reservation for a sum not to exceed \$891,200, and between the Secretary and the Nation for the eastern Schuk Toak District for a sum not to exceed \$237,200.

10. WATER RIGHTS ALLOCATION; WATER CODE; INTERIM ALLOTTEE
WATER RIGHTS CODE

10.1. The Nation agrees to comply with section 307(a)(1) of the SAWRSA Amendments.

10.2. The Nation shall enact and maintain an interim Allottee water rights code and a comprehensive water code in accordance with section 308(b) of the SAWRSA Amendments.

11. LEASING; ASSIGNMENT OF CREDITS

11.1. With respect to uses outside of the Nation's Reservation, the Nation may, for a term not to exceed 100 years, assign, exchange, lease, provide an option to lease or otherwise temporarily dispose of CAP water and direct storage credits in accordance with section 309(c) of the SAWRSA Amendments.

11.2. Assignment of Credits. Pursuant to section 309(b)(2)(C) of the SAWRSA Amendments, the Nation may assign Marketable Credits only in accordance with State law.

11.3. Leasing of CAP Water.

11.3.1. A lease of CAP water shall be in accordance with the requirements of section 309(c)(4) of the SAWRSA Amendments.

11.3.2. The Secretary shall deliver leased CAP water to the lessee as further provided herein. The Secretary shall not be obligated to make deliveries to such lessee if, in the judgment of the Secretary, such deliveries would limit deliveries of water to other CAP Contractors or CAP Subcontractors to a degree greater than would deliveries of such CAP water to the Nation's Reservation.

11.3.3. Subject to the provisions of the lease, the Secretary shall deliver CAP water to the lessee in accordance with water delivery schedules provided by the lessee to the Secretary or the CAP Operating Agency. The lease shall include water ordering procedures equivalent to those contained in article 4.4 of the standard form of CAP Subcontract for CAP M&I Use that is attached as Exhibit 11.3.

11.3.4. The CAP water to be delivered to the lessee pursuant to the lease shall be delivered at such Turnouts as are agreed by the Secretary, the CAP Operating Agency and the lessee.

11.3.5. The lessee may not transfer assign or sublease its leased CAP water.

11.3.6. The lease shall impose upon the lessee terms and conditions equivalent to those contained in subarticles 4.3(a), 4.3(b), 4.3(c), 4.5(b), 4.5(c), and 4.5(d), and articles 4.6, 4.10, and 6.9 of the standard form of CAP Subcontract that is attached as Exhibit 11.3. Although Exhibit 11.3 is the standard form of CAP Subcontract for CAP M&I use, nothing in this Agreement is intended to preclude leases of CAP water for irrigation use.

11.3.7. The Nation may enter into leases of CAP water for terms in excess of 25 years subject to the following terms and conditions:

11.3.7.1. The Nation shall initially make an offer for a lease term in excess of 25 years to users within the Tucson Management Area. The offer shall include the substantive terms of the lease.

11.3.7.2. In the event that the Nation receives no proposal for the use of the water within the Tucson Management Area, the Nation's offer may be

extended for use of the water outside the Tucson Management Area, subject to the following provisions:

11.3.7.2.1. On or before the 180th day prior to the Transaction Date on which the Nation desires to enter into a transaction under section 309(c)(4) of the SAWRSA Amendments with an entity intending to use the water acquired pursuant to section 304(a) and section 306(a) of the SAWRSA Amendments outside of the Nation's Reservation and the Tucson Management Area, the Nation shall submit to the Secretary, the proposed transaction and all related exhibits and agreements.

11.3.7.2.2. On or before the 150th day prior to the Transaction Date, the Nation, shall provide notice of the proposed transaction by mail to all Qualified Entities and by publication in a newspaper of general circulation in the City of Tucson, Arizona, once a week for two consecutive weeks. The notice shall contain any changes from the substantive terms of the offer provided in paragraph 11.3.7.1 of this Tohono O'odham Settlement Agreement.

11.3.7.2.3. On or before the 90th day prior to the Transaction Date, any Qualified Entity may submit a counteroffer to the Nation. If the Nation does not receive any counteroffers from a Qualified Entity, it may submit the proposed transaction for approval under section 309(c)(4)(C) of the SAWRSA Amendments.

11.3.7.2.4. If the Nation has received one or more counteroffers from Qualified Entities, the Nation may either select one or more of such counteroffers that match or are superior to the proposed transaction or reject the proposed

transaction and all counteroffers. A counteroffer matches or is superior to the proposed transaction if it matches the price and other substantive terms of the proposed transaction.

11.3.7.2.5. If no counteroffer from a Qualified Entity matches or is superior to the proposed transaction, the Nation may either select or reject the proposed transaction.

11.3.7.2.6. The Nation shall notify all parties who submitted a proposed transaction or counteroffer of its selection and shall submit the proposed transaction or counteroffer for approval under section 309(c)(4) of the SAWRSA Amendments.

12. TUCSON AGREEMENT

12.1. The City of Tucson, the Nation, the Allottees and the United States have entered into the Tucson Agreement, an executed copy of which is attached as Exhibit 12.1.

13. ASARCO AGREEMENT

13.1. Asarco, the Nation, the Allottees and the United States have entered into the Asarco Agreement, an executed copy of which is attached as Exhibit 13.1.

14. FICO AGREEMENT

14.1. FICO, the Nation, the Allottees and the United States have entered into the FICO Agreement, an executed copy of which is attached as Exhibit 14.1.

15. WAIVERS OF CLAIMS.

15.1. Waiver of claims by the Nation.

15.1.1. Except as provided in paragraph 15.4, the Nation hereby waives and releases:

15.1.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, for land within the Tucson Management Area, against the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity;

15.1.1.2. Any and all claims for Water Rights arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, and claims for failure to protect, acquire, or develop Water Rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the Enforceability Date, against the United States (including any agency, officer, and employee of the United States);

15.1.1.3. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the United States, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity; and

15.1.1.4. Any and all past, present, and future claims arising out of or relating to the negotiation or execution of this Agreement, or the negotiation or enactment of the SAWRSA Amendments against the United States, the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity.

15.1.2. The waiver and release of claims described in paragraph 15.1 shall become effective upon the Enforceability Date.

15.2. Waiver of Claims by the Allottee Classes.

15.2.1. Each Allottee Class hereby waives and releases:

15.2.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights from time immemorial through the Enforceability Date, and claims for future Injury to Water Rights for land within the San Xavier Reservation, against the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity (other than the Nation);

15.2.1.2. Any and all claims for Water Rights arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, and claims for failure to protect, acquire, or develop Water Rights for land within the San Xavier Reservation from time immemorial through the Enforceability Date, against the United States (including any agency, officer, and employee of the United States);

15.2.1.3. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the United States, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity; and

15.2.1.4. Any and all past, present, and future claims arising out of or relating to the negotiation or execution of this Agreement or the negotiation or

enactment of the SAWRSA Amendments, against the United States, the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity; and

15.2.1.5. Any and all past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, against the Nation (except that under subsection 307(a)(1)(G) and subsections (a) and (b) of section 308 of the SAWRSA Amendments, the Allottees and Fee Owners of Allotted Land shall retain rights to share in the water resources granted or confirmed under the SAWRSA Amendments and this Agreement with respect to uses within the San Xavier Reservation).

15.2.2. The waiver and release of claims described in paragraph 15.2 shall become effective upon the Enforceability Date.

15.3. Waiver of Claims by the United States.

15.3.1. Except as provided in paragraph 15.4, the United States as Trustee hereby waives and releases:

15.3.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, for land within the Tucson Management Area, against the Nation, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity;

15.3.1.2. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the Nation, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity;

15.3.1.3. On and after the Enforceability Date, any and all claims on behalf of the Allottees for Injury to Water Rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308 of the SAWRSA Amendments, the Allottees shall retain rights to share in the water resources granted or confirmed under the SAWRSA Amendments and this Agreement with respect to uses within the San Xavier Reservation); and

15.3.1.4. Contingent on the effectiveness of a waiver of such claims as are provided for in the Asarco Agreement, claims against Asarco on behalf of the *Alvarez v. Tucson* Count 4 Plaintiff Class in the Alvarez case, as defined in this Agreement.

15.4. Claims Related to Groundwater Protection Program -- The Nation and the United States as Trustee shall:

15.4.1. Have the right to assert any claims provided for in the State legislation implementing the groundwater protection program described in paragraph 8.8 of this Agreement; and

15.4.2. If after the Enforceability Date the State legislation implementing the groundwater protection program described in Exhibit 8.8 is changed so

as to have a material adverse effect upon the Nation, assert a claim in the Gila River Adjudication Court against an owner of any non-exempt well drilled after such change becomes effective if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation for the incremental effect of such pumping that exceeds that which would have been allowable had the State legislation not changed. It is agreed that the remedy upon proof of such a claim would be damages or any other remedy then permitted under State law for a similar claim.

16. PROCEDURES FOR DISMISSAL OF TUCSON CASE AND ALVAREZ CASE

16.1. After the deadline for opting out of the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Plaintiff Classes has passed, the Parties agree to seek approval of this Agreement by the Court in the Tucson Case and the Alvarez Case.

16.2. After the Court has approved this Agreement, the Parties, including the *United States v. Tucson* Named Plaintiff Allottees as representatives of the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Named Plaintiff Allottees as representatives of the *Alvarez v. Tucson* Plaintiff Class agree to join in a stipulation for dismissal of the Tucson Case and the Alvarez Case conditioned solely on the Secretary publishing findings under section 302 of the SAWRSA Amendments. A copy of the stipulation and form of conditional order of dismissal with prejudice are attached as Exhibit 16.2

17. APPROVAL OF THE SETTLEMENT AGREEMENT BY THE GILA RIVER
ADJUDICATION COURT

17.1. The Parties agree to seek approval of this Agreement by the Gila River Adjudication Court. The parties shall file a stipulation and form of judgment and decree in the Gila River Adjudication Proceedings in the form of Exhibit 17.1.

17.2. The Parties agree to support the enactment of legislation by the State to confirm the jurisdiction of the Gila River Adjudication Court to carry out the provisions of sections 312(d) and 312(h) of the SAWRSA Amendments.

18. OTHER PROVISIONS

18.1. Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved rights, aboriginal claims or any other Indian claims to water in any judicial or administrative proceeding.

18.2. This Agreement constitutes the entire understanding among the Parties and supercedes the Agreement of October 11, 1983. Evidence of conduct or statements made in the course of negotiating this Agreement, including but not limited to previous drafts of this Agreement is inadmissible in any legal proceedings other than one for approval or confirmation of this Agreement.

18.3. Each Party to this Agreement shall have the obligation to work in good faith as provided in paragraphs 8.8, 16.1, 17, and 18.4 in order to satisfy the conditions set forth in Section 302 of the SAWRSA Amendments. Except as provided in the preceding sentence, no Party, by reason of its execution of this Agreement, shall be required to perform any of the obligations or be entitled to receive any of the benefits under this Agreement until the Enforceability Date.

18.4. No modification of this Agreement shall be effective unless it is in writing, signed by all Parties, and is approved by the Gila River Adjudication Court. Notwithstanding the foregoing, Exhibits to this Agreement may be amended by the Parties to such Exhibits in accordance with their terms, without court approval, unless such approval is required in the Exhibit or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the SAWRSA Amendments or this Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment.

18.5. Execution of this Agreement by the Governor of the State constitutes a commitment to use best efforts to work with the State legislature to enact legislation necessary to carry out the provisions of paragraphs 5.10.2, 8.8 and 17.2 of this Agreement. These provisions will not be binding upon the State until the State legislation is enacted and the SAWRSA Amendments are effective as provided in the SAWRSA Amendments. It is not intended that this Agreement shall be determinative of any decision to be made by any State agency in any administrative adjudicatory, rule making, or other proceeding or matter. Except as provided in this Agreement, nothing herein shall be construed as a waiver of any rights that the State has to its natural resources.

18.6. By signing this Agreement each person represents that he or she has the authority to execute it.

18.7. This Agreement shall be construed in accordance with applicable State and Federal law.

18.8. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

18.9. The expenditure or advance of any money or the performance of any obligation by the United States in any of its capacities, under this Agreement shall be contingent upon the authorization of funds therefor. No liability shall accrue to the United States, in any of its capacities, in the event funds are not authorized.

18.10. This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

18.11. No part of this Agreement should be construed, in whole or in part, as providing consent by any of the non-Indian Parties to the legislative, executive or judicial jurisdiction or authority of the Nation in connection with activities, rights, or duties contemplated by the Agreement and conducted by any of those Parties outside the exterior boundaries of the Nation's Reservation. This Agreement should not be construed as a commercial dealing, contract, lease or other arrangement that creates a consensual relationship between any non-Indian Party and the Nation so as to provide a basis for the Nation's legislative, executive or judicial jurisdiction or authority over non-Indian Parties to this Agreement under *Montana v. United States*, 450 U.S. 544 (1981), for activities conducted outside the exterior boundaries of the Nation's Reservation. The activities, rights or duties conducted or undertaken by the non-Indian Parties pursuant to the Agreement outside the exterior boundaries of the Nation's Reservation shall not be construed as conduct that threatens or affects the political integrity, economic security or health and welfare of the Nation so as to provide a basis for the exercise of the Nation's legislative, executive or judicial jurisdiction or authority over the non-Indian Parties to

this Agreement under *Montana v. United States*, 450 U.S. 544 (1981). Benefits and rights accruing to the non-Indian Parties to this Agreement are provided as consideration for benefits and rights accruing to the Nation, and shall not be construed as privileges, benefits, tribal services or other advantages of civilized society provided by the Nation that would justify the imposition of the Nation's legislative, executive or judicial authority over those Parties in regard to the activities, rights and duties conducted outside the exterior boundaries of the Nation's Reservation. The enactment of legislation authorizing or ratifying this Agreement shall not be construed as a congressional delegation of authority to the Nation of legislative, executive or judicial jurisdiction or authority over the non-Indian Parties hereto.

18.12. Nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to water of the Nation outside the Tucson Management Area.

18.13. Nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to water of any tribe, band or community other than the Nation.

18.14. Nothing in this Agreement shall affect the rights of the Parties under the Well Site Lease or the New Well Site Lease, as defined in the Asarco Agreement.

18.15. In the event that differences between the language of the SAWRSA Amendments and this Agreement result in ambiguity or confusion or the provisions are inconsistent, the language of the SAWRSA Amendments shall govern.

18.16. The Parties are aware of canons of interpretation whereby ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an

Indian tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties who have worked together in preparing the final version of this Agreement.

18.17. Any party shall have the right to petition the Gila River Adjudication Court or a court of the United States having jurisdiction, for such declaratory and injunctive relief as may be necessary to enforce the terms, conditions and limitations of this Agreement and monetary relief as provided in this Agreement. Nothing contained herein shall grant or give the right to any Party to petition any court of the Nation or any state court other than the Gila River Adjudication Court for monetary relief or for any declaratory or injunctive relief to enforce the terms, conditions and limitations provided in this Agreement, except as provided in section 312(i) of the SAWRSA Amendments.

18.18. All notices required to be given hereunder shall be in writing and may be given in person, by facsimile transmission, or by United States mail postage prepaid, and shall become effective at the earliest of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight (48) hours after deposit in the United States mail addressed as shown below or to such other address as such Party may from time to time designate in writing.

United States of America;

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

The State of Arizona:

Office of the Governor
1700 W. Washington Street
Phoenix, Arizona 85007

With a copy to:

Director
Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona

The Tohono O'odham Nation:

Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, Arizona 85634

With copies to:

Attorney General
Tohono O'odham Nation
P.O. Box 1202
Sells, Arizona 85634

Chairperson San Xavier District
San Xavier District
2018 W. San Xavier Road
Tucson, Arizona 85746

Louis W. Barassi
Law Offices of Louis W. Barassi
485 South Main Avenue
Tucson, Arizona 85701

Chairperson Schuk Toak District
Schuk Toak District
P.O. Box 368
Sells, Arizona 85634

The City of Tucson:

City Manager
City of Tucson
P.O. Box 27210
Tucson, Arizona 85726-7210

With copies to:

Director
Tucson Water
P.O. Box 27210
Tucson, Arizona 85726-7210

City Attorney
P.O. Box 27210
Tucson, Arizona 85726-7210

Asarco Incorporated:

General Manager
Mission Complex
Asarco Incorporated
P.O. Box 111
Sahuarita, Arizona 85629

With a copy to:

Robert B. Hoffman
6035 North 45th Street
Paradise Valley, Arizona 85253-4001

Farmers Investment Co.:

Richard S. Walden, President
Farmers Investment Co.
1525 Helmet Peak Road
Sahuarita, Arizona 85629

With a copy to:

Robert B. Hoffman
6035 North 45th Street
Paradise Valley, Arizona 85253-4001

San Xavier Allottees:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Thomas E. Luebben
Luebben, Johnson & Young LLP
211 12th Street NW
Albuquerque, New Mexico 87012

or addressed to such other address as the Party to receive such notice shall have designated by written notice as required by this paragraph 18.18.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Secretary of the Interior

THE STATE OF ARIZONA

By: Jan Napolitano
Governor

THE TOHONO O'ODHAM NATION

By: Edward P. Mander
Chairman

Approved as to Form: Deval Patrick
Attorney General

CITY OF TUCSON
By: PC Wang
Mayor

Attest: Kathleen J. Detrick
City Clerk

Approved as to Form: Chit-Ay
City Attorney

ASARCO INCORPORATED

By: D. E. Maister
Vice President, General Counsel & Secretary

By: Tom T. Hill
Vice President, Environmental
Affairs

FARMERS INVESTMENT CO.

By: Richard Z. Walden
President

UNITED STATES V. TUCSON ALLOTTEE CLASS

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

Its Class Representatives

Approved as to Form: _____

Attorney for Certified Class

ALVAREZ V. TUCSON ALLOTTEE CLASS (Counts 1 through 3)

By: _____

By: _____

By: _____

By: _____

By: _____

Its Class Representatives

Approved as to Form: _____
Attorney for Certified Class

EXHIBIT 1.4

CHRONOLOGY OF SOUTHERN ARIZONA

WATER RIGHTS LITIGATION AND SETTLEMENT EVENTS

CHRONOLOGY OF SOUTHERN ARIZONA
WATER RIGHTS LITIGATION AND SETTLEMENT EVENTS

A. On February 20, 1975, in its own right and on behalf of the Nation and individual Indian allottees of land on the San Xavier Indian Reservation of the Nation, the United States filed suit in the Federal District Court for the District of Arizona, under Case No. CV 75-39 TUC FRZ ("*United States v. Tucson*"). This action sought a declaration of the rights of the United States, the Nation and Indian allottees in and to the use of surface and groundwater of the Upper Santa Cruz River Basin, damages resulting from defendants' use of surface and groundwater from within the Basin in derogation of the rights of the plaintiffs, and injunctive relief to prohibit withdrawal of surface and groundwater by defendants in derogation of the rights of the plaintiffs.

B. On March 6, 1975, a second action was filed in Federal District Court for the District of Arizona by the Nation and John Lewis and Rosanna Carlyle, individually and on behalf of all other Indian allottees similarly situated, seeking the same relief as the first action, Case No. CV 75-51 TUC FRZ.

C. On October 16, 1975, the Court ordered the plaintiff in *United States v. Tucson* to amend its complaint to make all users of the surface and groundwater of the Upper Santa Cruz River Basin defendants.

D. The two actions were consolidated on December 11, 1975 (the "Tucson Case"). The plaintiffs in the consolidated action filed a first amended complaint on August 14, 1980 naming as defendants approximately 1300 individuals and entities who allegedly were surface and groundwater users in the Upper Santa Cruz River Basin. In the first amended complaint, the United States sued in its own right and on behalf of the Nation and individual Indian allottees of land within the San Xavier Indian Reservation,

the Nation sued in its own right and on behalf of its member allottees, and John Lewis and Rosanna Carlyle sued as Indian allottees on the San Xavier Indian Reservation. The first amended complaint omitted the class allegations that had been alleged in the second action.

E. Between 1975 and 1982, the principal parties to the Tucson Case engaged in negotiations to devise a federal legislative settlement of the case. The resulting legislation, the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA) was approved on October 12, 1982, Public Law 97-293, 96 Stat. 1274, *et seq.*

F. Several of the provisions of SAWRSA did not become effective unless certain actions were taken within a one-year period. These requirements, specified in Section 307(a)(1) of SAWRSA, were timely met within one year of the date of SAWRSA's enactment as follows:

1. The City entered into an agreement with the United States dated October 11, 1983, to make available 28,200 acre feet of reclaimed water to the Secretary of the Interior to be disposed of as the Secretary saw fit and including a provision that permitted the Secretary to provide terms and conditions under which the Secretary would relinquish to the City such quantities of water as were not needed to satisfy the Secretary's obligations under SAWRSA;

2. The City, Asarco, FICO, the State of Arizona and others entered into an agreement with the United States dated October 11, 1983 to fund the Cooperative Fund; contributions that were required to be made to the Cooperative Fund pursuant to Section 313 of SAWRSA were subsequently made; and

3. The Nation entered into an agreement with the United States dated October 11, 1983 in which (a) the Nation agreed to file a stipulation for dismissal with prejudice of the Tucson Case, in compliance with Section 307(a)(1)(C) of SAWRSA, and (b) the Nation executed a waiver and release as required by Section 307(a)(1)(D) of SAWRSA.

G. In accordance with its October 11, 1983 agreement with the United States, on December 2, 1988, the Nation filed a motion to dismiss with prejudice the Tucson Case. On December 21, 1988, the City joined in the motion of the Nation with the objective that the claims of all plaintiffs against the defendants could be dismissed with prejudice. The Nation's motion was granted on February 3, 1989 and amended on July 6, 1989. The Court granted the Nation's motion to vacate its dismissal and restored the Nation as a party on September 17, 1992.

H. The United States filed a separate motion to dismiss on December 14, 1989. On March 19, 1990, allottees John Lewis and Rosanna Carlyle opposed dismissal of the Tucson Case, and filed a motion to certify a class of allottees and to add the remaining *United States v. Tucson* Named Plaintiff Allottees as class representatives. The remaining *United States v. Tucson* Named Plaintiff Allottees were added "as additional plaintiffs and class representatives" by Court Order dated June 7, 1990.

I. The *United States v. Tucson* Named Plaintiff Allottees filed a motion for leave to file a separate amended complaint on November 13, 1991, as later revised on June 8, and a second motion to file a further revised amended complaint on October 9, 1992. On December 7, 1992, the Court denied the October 9, 1992 motion and granted in part and denied in part the November 13, 1991 motion. The Court permitted the *United*

States v. Tucson Named Plaintiff Allottees to amend the pleadings to reassert class allegations and to assert separate *Winters*' reserved water rights.

J. The *United States v. Tucson* Named Plaintiff Allottees objected to dismissal with prejudice of the Tucson Case. Among other objections, the *United States v. Tucson* Named Plaintiff Allottees disagreed with the division of benefits between the Allottees and the Nation under SAWRSA.

K. SAWRSA was amended by the Southern Arizona Water Rights Technical Amendments Act of 1992, Public Law 102-497, 106 Stat. 3255 *et seq.* (October 24, 1992).

L. On January 22, 1993, Felicia Alvarez and additional Allottees (collectively, the *Alvarez v. Tucson* Named Plaintiff Allottees) filed an action in Federal District Court for the District of Arizona, Case No. CV 93-0039 TUC FRZ ("*Alvarez v. Tucson*"), against the City, Asarco and FICO each on his or her own behalf and on behalf of a putative class of Allottee plaintiffs. The *Alvarez v. Tucson* Named Plaintiff Allottees alleged: First Cause of Action - federal common law trespass by the defendants to Indian possessory rights based on (a) pumping activities by all defendants, resulting in (i) depletion of the surface flows of the Santa Cruz River, declining water tables and diminished water availability for irrigation, and (ii) land subsidence; and (b) groundwater contamination, erosion and sedimentation by defendant Asarco; Second Cause of Action - federal common law equitable restitution and accounting from the defendants; Third Cause of Action - federal statutory §1983 violation by defendant City of Tucson under color of Arizona State law by depriving the Allottees of federally-protected rights, privileges and immunities. This Settlement Agreement includes the First through Third

causes of action (the "Alvarez Case"). Additionally, the Allottee plaintiffs alleged a Fourth Cause of Action – diversity nuisance violation by defendant Asarco by causing groundwater contamination, erosion and sedimentation of Allottees' lands and Fifth Cause of Action for breaches by defendant Asarco of its mining and business site leases of allotted land. The Fourth and Fifth Causes of Action are not involved in this settlement.

M. On April 20, 1993, Gerald D. Adams and a number of other allottees (the *Adams v. United States* Plaintiff Allottees) filed a lawsuit in Federal District Court for the District of Arizona, Case No. CIV 93-240-TUC (the "Adams Case") against the United States. The *Adams v. United States* Plaintiff Allottees claimed that: (1) the United States had (a) breached its trust responsibilities to the allottees and (b) violated the Administrative Procedures Act; (2) the *Adams v. U.S.* Plaintiff Allottees were entitled to a special adjudication and administration or statutory right to a just and equal distribution of the San Xavier Indian Reservation water resources; and (3) the United States had violated its statutory duty to protect the riparian allottees from wrongful appropriations or grants of appropriative water rights by other landowners.

N. On December 21, 1998, the parties filed a Joint Motion to Consolidate the Adams Case and Counts one through three of the Alvarez Case with the Tucson Case for administrative purposes. The Court granted the motion on September 30, 1999. The consolidated litigation of the Tucson Case, the Alvarez Case and the Adams Case is referred to herein as the "Consolidated Litigation."

O. On December 21, 1998, the parties filed a Joint Stipulation to Certification of the *United States v. Tucson* Plaintiff Class as a Rule 23(b)(3) Class and filed a Joint

Motion to Certify the *Alvarez v. Tucson* Plaintiff Class as a Rule 23(b)(3) Class. Putative members of the "Plaintiff Class" consist of (a) Allottees and (b) Fee Owners of Allotted Lands. Putative class members who do not opt out will constitute the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Plaintiff Class. The Court granted the motions on January 18, 2000.

P. During the past decade, the parties have made a number of efforts to settle this matter through amendments to SAWRSA. The Tohono O'odham Settlement Agreement reflects a settlement that relies on both legislative and contractual components to resolve the disputes among the parties, including dismissal with prejudice of the Consolidated Litigation.

EXHIBIT 5.2

THE TOHONO O'ODHAM NATION'S CAP CONTRACT, AS AMENDED

TO BE SUPPLIED
PRIOR TO EXECUTION OF THIS AGREEMENT
BY THE UNITED STATES

EXHIBIT 5.3.4.1

SECRETARY'S SHORTAGE SHARING APPROACH

UNDER THE 1980 CONTRACT

**Secretary's Approach for Determining
The Amount of Water Available to the Nation
During a Time of Shortage Under 1980 Contract**

If the Available CAP Supply is insufficient to fill all orders for CAP water, the Secretary shall take the following steps, in succession, as necessary to match the available supply with orders for the delivery of CAP water in each of the categories described below:

1. First, miscellaneous uses of CAP water are reduced, pro rata. If, after eliminating all miscellaneous uses of CAP water, there is still insufficient available CAP water to meet outstanding orders for the delivery of CAP water, the Secretary shall take the following measure.
2. Uses of CAP NIA Priority Water are reduced, pro rata. If, after eliminating all uses of CAP NIA Priority Water, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
3. Uses of CAP M&I Priority Water in excess of 510,000 acre-feet are reduced, pro rata. If, after eliminating all uses of CAP M&I Priority Water in excess of 510,000 acre-feet, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
4. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, uses of CAP Indian Priority Water in excess of 291,574 acre-feet are reduced, in accordance with the Secretarial Decision published in the Federal Register on March 24, 1983.

5. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, the available CAP water supply will be allocated between users of CAP Indian Priority Water and users of CAP M&I Priority Water on a 36.37518 and 63.62482 percentage basis, respectively.
6. If step 5 is implemented, the amount of water available for the Nation shall be determined by multiplying the amount of CAP Indian Priority Water by the ratio of the amount of water delivered pursuant to the Nation's CAP Water Delivery Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contracts for Indian Priority Water in that same Year.

EXHIBIT 8.6
STORAGE ACCOUNT FORM

Water Resources Program

Long Term Storage Account Holder:	Tobacco Producers Union
Long Term Storage Account Number:	
Balance as of (Date):	

1. Name of the person or organization: _____

2. Address: _____

3. City: _____

4. State: _____

5. Zip: _____

6. Phone: _____

7. Fax: _____

8. E-mail: _____

9. Website: _____

10. Other: _____

[illegible]

18	19	20	21	22
WSP (1) Number	LTS (2) Account Transferred To	Transfer Receipt	Transfer Date	LTS (2) Credits Transferred Date
				(-)
TOTALS				

[illegible]

477956
February 5, 2003

EXHIBIT 8.7

EXAMPLES OF CALCULATIONS

FOR ADDITIONAL GROUNDWATER PUMPING

EXHIBIT 8.7

Examples of Calculations for Additional Groundwater Pumping

The following examples illustrate calculations to determine additional groundwater pumping allowances for the San Xavier District and the eastern Schuk Toak District as provided in paragraph 8.7 of the Tohono O'odham Settlement Agreement.

I. SAN XAVIER RESERVATION:

Example A:

1. Determination of San Xavier District Maximum Demand (SXDM):

("San Xavier District Maximum Demand" is defined as "the largest total quantity of water (i) delivered by the Secretary to the Reservation for any use [other than direct groundwater recharge or use by Asarco], and (ii) pumped from groundwater for beneficial use on the Reservation, during any one of the five most recent Years that are not Deficiency Years [exclusive of water pumped from Exempt Wells].") The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example A calculation:

Year 1 water use	13,000 af
Year 2 water use	16,000 af
Year 3 water use	17,000 af
Year 4 water use	20,000 af
Year 5 water use	19,000 af

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

SXDM (highest year's water use is year 4)	20,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
Minus San Xavier Reservation groundwater pumping right	-10,000 af
[20% of SXDM	4,000 af]*

[Storage credits (excepting Marketable Credits)]:

**Bracketed items are not summed.*

[Direct storage credits in account (excepting marketable)	5,000 af]*
[Deferred Pumping Storage Credits in account	50,000 af]*
Minus non-marketable storage credits up to 20% of SXDMD	<u>-4,000 af</u>
TOTAL	-1,000 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	0 af

Example B:

1. Determination of San Xavier District Maximum Demand (SXDMD):

The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example B calculation:

Year 1 water use	19,000 af
Year 2 water use	20,000 af
Year 3 water use	25,000 af
Year 4 water use	21,000 af
Year 5 water use	23,000 af

Note: the only changes in Example B from Example A are the hypothetical amounts of water use for each of the most recent five years that are not Deficiency Years.

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

SXDMD (highest year's water use is year 3)	25,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
Minus San Xavier Reservation groundwater pumping right	-10,000 af
[20% of SXDMD	5,000 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	5,000 af]*
[Deferred Pumping Storage Credits in account	50,000 af]*
Minus non-marketable storage credits up to 20% of SXDMD	<u>-5,000 af</u>

**Bracketed items are not summed.*

TOTAL	3,000 af
-------	----------

ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	3,000 af
---	----------

II. EASTERN SCHUK TOAK DISTRICT

Example A:

1. Determination of eastern Schuk Toak District Maximum Demand (ESTDMD):

("eastern Schuk Toak District Maximum Demand" is defined as "the largest total quantity of water (i) delivered by the Secretary to the eastern Schuk Toak District for any use [other than direct groundwater recharge], and (ii) pumped from groundwater for beneficial use in the eastern Schuk Toak District, during any one of the five most recent Years that are not Deficiency Years [exclusive of water pumped from Exempt Wells].) The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of the Example A calculation:

Year 1 water use	9,000 af
Year 2 water use	7,000 af
Year 3 water use	10,000 af
Year 4 water use	8,000 af
Year 5 water use	9,000 af

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

ESTDMD (highest year's water use is year 3)	10,000 af
---	-----------

Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
--	-----------

Minus eastern Schuk Toak District groundwater pumping right	-3,200 af
---	-----------

[20% of ESTDMD	2,000 af]*
----------------	------------

[Storage credits (excepting Marketable Credits)]:

[Direct storage credits in account (excepting marketable)	4,000 af]*
---	------------

[Deferred Pumping Storage Credits in account	16,000 af]*
--	-------------

Minus non-marketable storage credits up to 20% of SXDMD	<u>-2,000 af</u>
---	------------------

TOTAL	-2,200 af
-------	-----------

**Bracketed items are not summed.*

ADDITIONAL GROUNDWATER THAT MAY BE PUMPED

0 af

Example B:

1. Determination of eastern Schuk Toak Maximum Demand (SXDMD):

The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example B calculation:

Year 1 water use	14,000 af
Year 2 water use	13,000 af
Year 3 water use	14,000 af
Year 4 water use	15,000 af
Year 5 water use	16,000 af

Note: the only changes in Example B from Example A are the hypothetical amounts of water use for each of the most recent five years that are not Deficiency Years.

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

ESTDMD (highest year's water use is year 5)	16,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-3,000 af
Minus eastern Schuk Toak District groundwater pumping right	-3,200 af
[20% of ESTDMD	3,200 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	4,000 af]*
[Deferred Pumping Storage Credits in account	16,000 af]*
Minus non-marketable storage credits up to 20% of SXDMD	<u>-3,200 af</u>
TOTAL	-6,600 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	6,600 af

**Bracketed items are not summed.*

EXHIBIT 8.8

CONCEPTS FOR GROUNDWATER PROTECTION PROGRAM

CONCEPTS FOR GROUNDWATER PROTECTION PROGRAM

The terms used herein shall have the meanings defined in paragraph 2 of the Tohono O'odham Settlement Agreement. In addition, the term "Non-exempt Well" means a well that is not an "Exempt Well" and the term "Replacement Well" means a well no further than 660 feet from an existing well being replaced that will not annually withdraw in excess of the historical withdrawals from the original well or as that term is defined in future ADWR well-spacing regulations if the distance of the replacement well from the original well is less than 660 feet.

The basic elements of the Groundwater Protection Program ("Program") referenced in paragraph 8.8 of the Tohono O'odham Settlement Agreement are as follows:

1. Written consent of the Nation shall be required for the permitting of any new Non-exempt Well, for which the projected 10-feet-within-5-year drawdown contour (as determined by a well-spacing analysis done under state regulations by ADWR) intercepts the border of the San Xavier Reservation.

- 2.a. In addition to the requirements of paragraph 1, an applicant for a permit to drill a proposed well of over 500 gpm capacity, or for a group of wells of over 500 gpm total capacity, to be located within two miles of the exterior boundaries of the San Xavier Reservation shall submit to ADWR one of the following:

- i. Evidence showing that the water levels at the proposed well site(s) are declining at less than an average rate of 2 feet per year (based on annual water level data collected during the five years prior to the permit application date); or

ii. Evidence showing that a projected 5-feet-within-5-year drawdown contour does not intercept the border of the San Xavier Reservation; or

iii. The Nation's written consent.

2.b. In determining the average annual water level change at a proposed well site and the projected drawdown effect of the proposed well(s) for purposes of obtaining a permit under this paragraph, the following shall be excluded:

i. the water-level effect of the pumping within the San Xavier Reservation; and

ii. the water-level effects of underground storage facilities within the 2 mile limit and permitted recovery wells within that limit except the water-level effects at the site of the proposed well of storage at said underground storage facilities by or on behalf of the applicant within the 2 mile limit.

2.c. For purposes of this paragraph, if the same applicant submits an application for a permit to drill a well within eighteen months of a previous application, the applications shall be aggregated in terms of capacity and considered as an application for a group of wells.

3. Upon receiving an application for a permit to drill any Non-exempt Well located within two miles of the San Xavier Reservation, the ADWR shall mail to the Nation written notice of the application along with a copy of thereof. The Nation shall have 60 days after mailing of the written notice to file an objection to the application. The grounds for an objection are that the application fails to meet the standards required herein or that the granting of the permit will violate these standards. If objection is made, a hearing shall be held on the application within 60 days of receipt of the objection. The

Nation shall be a party in such hearing. A recommendation based on the hearing shall be made by the hearing officer within 30 days after the close of the hearing. Within 30 days of the recommendation, the Director of ADWR ("Director") shall render his decision on the application. Any decision of the Director granting or denying a permit after objection by the Nation shall be subject to review by the Gila River Adjudication Court by an aggrieved party filing an application for review with the court within 30 days of mailing of the written notice of the decision of the Director on the application.

4. An applicant for a "Replacement Well" within two miles of the San Xavier Reservation shall be exempt from the requirements set forth in paragraphs 1 and 2 except that ADWR shall give notice thereof and provide the opportunity to object to the application and obtain review of the Director's decision thereon as provided in paragraph 3.

5. An applicant for a permit to drill an Exempt Well shall be exempt from the requirements set forth in paragraphs 1 and 2.

6. An applicant for a permit to drill a recovery well within two miles of the exterior boundaries of the San Xavier Reservation and within one mile of an underground storage facility shall be exempt from the requirements set forth in paragraphs 1 and 2 so long as the well is permitted only to recover storage credits accrued for water stored at that facility.

7. This Program need not be described in detail in the SAWRSA Amendments, but the enactment of state legislation implementing the Program and authorizing ADWR's role in the Program will be a condition precedent to the Enforceability Date.

8. The judgment approving the Tohono O'odham Settlement Agreement should incorporate the salient provisions of this Program and the settlement will be made contingent on the passage of state legislation implementing the Program and authorizing the Director to enforce the Program as part of an approved Indian water rights settlement. Review of decisions of the Director will be part of the continuing jurisdiction of the Gila River Adjudication Court.

EXHIBIT 11.3

STANDARD FORM OF CAP SUBCONTRACT FOR CAP M&I USE

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE
PROVIDING FOR WATER SERVICE

CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE _____
PROVIDING FOR WATER SERVICE

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 200____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the _____, hereinafter referred to as the "Subcontractor," with its principal place of business in _____, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

WHEREAS, the Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation and municipal and industrial water supplies to water deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary of the Interior shall construct, operate, and maintain the Central Arizona Project; and

WHEREAS, pursuant to the provisions of Arizona Revised Statutes §§ 48-3701, et seq., the Contractor has been organized with the power to enter into a contract or contracts with the Secretary of the Interior to accomplish the purposes of Arizona Revised Statutes, §§ 48-3701, et seq.; and

WHEREAS, pursuant to Section 304(b)(1) of the Colorado River Basin Project Act, the Secretary of the Interior has determined that it is necessary to effect repayment of the cost of constructing the Central Arizona Project pursuant to a master contract and that the United States, together with the Contractor, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and the Contractor entered into Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby the Contractor agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to the Contractor; and

WHEREAS, the Subcontractor is in need of a water supply and desires to subcontract with the United States and the Contractor for water service from water supplies available under the Central Arizona Project; and

WHEREAS, upon completion of the Central Arizona Project, water shall be available for delivery to the Subcontractor;

1 NOW THEREFORE, in consideration of the mutual and dependent
2 covenants herein contained, it is agreed as follows:

3 3. DEFINITIONS:

4 Definitions included in the Repayment Contract are applicable to this
5 subcontract; Provided, however, That the terms "Agricultural Water" or "Irrigation Water"
6 shall mean water used for the purposes defined in the Repayment Contract on tracts of
7 land operated in units of more than 5 acres. The first letters of terms so defined are
8 capitalized herein. As heretofore indicated, a copy of the Repayment Contract is attached
9 as Exhibit "A."

10 4. DELIVERY OF WATER:

11 4.1 Obligations of the United States. Subject to the terms, conditions,
12 and provisions set forth herein and in the Repayment Contract, during such periods as it
13 operates and maintains the Project Works, the United States shall deliver Project Water
14 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to
15 make available to the Subcontractor the quantity of Project Water specified in the schedule
16 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
17 the Operating Agency, the United States shall make deliveries of Project Water to the
18 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
19 herein.

20 4.2 Term of Subcontract.

21 This subcontract shall become effective upon its confirmation as provided
22 for in Article 6.12 and shall remain in effect for a period of 50 years beginning with the
23 January 1 of the Year following that in which the Secretary issues the Notice of Completion
24 of the Water Supply System; Provided, That this subcontract may be renewed upon written
25 request by the Subcontractor upon terms and conditions of renewal to be agreed upon not
26 later than 1 year prior to the expiration of this subcontract; and Provided, further, That such
terms and conditions shall be consistent with Article 9.9 of the Repayment Contract.

4.3 Conditions Relating to Delivery and Use.

1 Delivery and use of water under this subcontract is conditioned on the following, and the
2 Subcontractor hereby agrees that:

3 (a) All uses of Project Water and Return Flow shall be
4 consistent with Arizona water law unless such law is inconsistent with the Congressional
5 directives applicable to the Central Arizona Project.

6 (b) The system or systems through which water for Agricultural,
7 M&I, and Miscellaneous (including ground water recharge) purposes is conveyed after
8 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or other
9 conduits provided and maintained with linings adequate in the Contracting Officer's
10 judgment to prevent excessive conveyance losses.

11 (c) The Subcontractor shall not pump, or within its legal
12 authority, permit others to pump ground water from within the exterior boundaries of the
13 Subcontractor's service area, which has been delineated on a map filed with the Contractor
14 and approved by the Contractor and the Contracting Officer, for use outside of said service
15 area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes,
16 as it may be amended from time to time, and the Contracting Officer, the Contractor, and
17 the Subcontractor shall agree, or shall have previously agreed, that a surplus of ground
18 water exists and drainage is or was required; Provided, however, That such pumping may
19 be approved by the Contracting Officer and the Contractor, and approval shall not be
20 unreasonably withheld, if such pumping is in accord with the Basin Project Act and upon
21 submittal by the Subcontractor of a written certification from the Arizona Department of
22 Water Resources or its successor agency that the pumping and transportation of ground
23 water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended
24 from time to time.

25 (d) The Subcontractor shall not sell or otherwise dispose of or
26 permit the sale or other disposition of any Project Water for use outside of Maricopa, Pinal,

and Pima Counties; Provided, however, That this does not prohibit exchanges of Project Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2.

(e) (i) Project Water scheduled for delivery in any Year under this subcontract may be used by the Subcontractor or resold, or exchanged by the Subcontractor pursuant to appropriate agreements approved by the Contracting Officer and the Contractor. If said water is resold or exchanged by the Subcontractor for an amount in excess of that which the Subcontractor is obligated to pay under this subcontract, the excess amount shall be paid forthwith by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States; Provided, however, That the Subcontractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs.

(ii) Project Water scheduled for delivery in any Year under this subcontract that cannot be used, resold, or exchanged by the Subcontractor may be made available by the Contracting Officer and Contractor to other users. If such Project Water is sold to or exchanged with other users, the Subcontractor shall be relieved of its payments hereunder only to the extent of the amount paid to the Contractor by such other users, but not to exceed the amount the Subcontractor is obligated to pay under this subcontract for said water.

(iii) In the event the Subcontractor or the Contracting Officer and the Contractor are unable to sell any portion of the Subcontractor's Project Water scheduled for delivery and not required by the Subcontractor, the Subcontractor shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contractor.

(f) Notwithstanding any other provision of this subcontract, Project Water shall not be delivered to the Subcontractor unless and until the Subcontractor has obtained final environmental clearance from the United States for the system or systems

through which Project Water is to be conveyed after delivery to the Subcontractor at the Subcontractor's Project turnout(s). Such system(s) shall include all pipelines, canals, distribution systems, treatment, storage, and other facilities through or in which Project Water is conveyed, stored, or treated after delivery to the Subcontractor at the Subcontractor's Project turnout(s). In each instance, final environmental clearance will be based upon a review by the United States of the Subcontractor's plans for taking and using Project Water and will be given or withheld by the United States in accordance with the Final Environmental Impact Statement -- Water Allocations and Water Service Contracting (FES 82-7, filed March 19, 1982) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional action(s) required on behalf of the Subcontractor in order to obtain final environmental clearance from the United States will be identified to the Subcontractor by the United States, and no Project Water shall be delivered to the Subcontractor unless and until the Subcontractor has completed all such action(s) to the satisfaction of the United States.

4.4 Procedure for Ordering Water.

(a) At least 15 months prior to the date the Secretary expects to issue the Notice of Completion of the Water Supply System, or as soon thereafter as is practicable, the Contracting Officer shall announce by written notice to the Contractor the amount of Project Water available for delivery during the Year in which said Notice of Completion is issued (initial Year of water delivery) and during the following Year. Within 30 days of receiving such notice, the Contractor shall issue a notice of availability of Project Water to the Subcontractor. The Subcontractor shall, within a reasonable period of time as determined by the Contractor, submit a written schedule to the Contractor and the Contracting Officer showing the quantity of water desired by the Subcontractor during each month of said initial Year and the following Year. The Contractor shall notify the Subcontractor by written notice of the Contractor's action on the requested schedule within 2 months of the date of receipt of such request.

(b) The amounts, times, and rates of delivery of Project Water to the Subcontractor during each Year subsequent to the Year following said initial Year of water delivery shall be in accordance with a water delivery schedule for that Year. Such schedule shall be determined in the following manner:

(i) On or before June 1 of each Year beginning with the Year following the initial Year of water delivery pursuant to this subcontract, the Contracting Officer shall announce the amount of Project Water available for delivery during the following Year in a written notice to the Contractor. In arriving at this determination, the Contracting Officer, subject to the provisions of the Repayment Contract, shall use his best efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado River water over the term of this subcontract. Within 30 days of receiving said notice, the Contractor shall issue a notice of availability of Project Water to the Subcontractor.

(ii) On or before October 1 of each Year beginning with the Year following said initial Year of water delivery, the Subcontractor shall submit in writing to the Contractor and the Contracting Officer a water delivery schedule indicating the amounts of Project Water desired by the Subcontractor during each month of the following Year along with a preliminary estimate of Project Water desired for the succeeding 2 years.

(iii) Upon receipt of the schedule, the Contractor and the Contracting Officer shall review it and, after consultation with the Subcontractor, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery capability of the Project, considering, among other things, the availability of water and the delivery schedules of all subcontractors; Provided, That this provision shall not be construed to reduce annual deliveries to the Subcontractor.

(iv) On or before November 15 of each Year beginning with the Year following said initial Year of water delivery, the Contractor shall determine and furnish to the Subcontractor and the Contracting Officer the water delivery

1 schedule for the following Year which shall show the amount of water to be delivered to the
2 Subcontractor during each month of that Year, contingent upon the Subcontractor
3 remaining eligible to receive water under all terms contained herein.

4 (c) The monthly water delivery schedules may be amended
5 upon the Subcontractor's written request to the Contractor. Proposed amendments shall
6 be submitted by the Subcontractor to the Contractor no later than 15 days before the de-
7 sired change is to become effective, and shall be subject to review and modification in like
8 manner as the schedule. The Contractor shall notify the Subcontractor and the Contracting
9 Officer of its action on the Subcontractor's requested schedule modification within 10 days
10 of the Contractor's receipt of such request.

11 (d) The Contractor and the Subcontractor shall hold the United
12 States, its officers, agents, and employees, harmless on account of damage or claim of
13 damage of any nature whatsoever arising out of or connected with the actions of the
14 Contractor regarding water delivery schedules furnished to the Subcontractor.

15 (e) In no event shall the Contracting Officer or the Contractor
16 be required to deliver to the Subcontractor from the Water Supply System in any one month
17 a total amount of Project Water greater than 11 percent of the Subcontractor's maximum
18 entitlement; Provided, however, That the Contracting Officer may deliver a greater
19 percentage in any month if such increased delivery is compatible with the overall delivery
20 of Project Water to other subcontractors as determined by the Contracting Officer and the
21 Contractor and if the Subcontractor agrees to accept such increased deliveries.

22 4.5 Points of Delivery--Measurement and Responsibility for Distribution
23 of Water.

24 (a) The water to be furnished to the Subcontractor pursuant to
25 this subcontract shall be delivered at turnouts to be constructed by the United States at
26 such point(s) on the Water Supply System as may be agreed upon in writing by the
Contracting Officer and the Contractor, after consultation with the Subcontractor.

(b) Unless the United States and the Subcontractor agree by contract to the contrary, the Subcontractor shall construct and install, at its sole cost and expense, connection facilities required to take and convey the water from the turnouts to the Subcontractor's service area. The Subcontractor shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Subcontractor within the Water Supply System right-of-way 6 months before starting said construction. The facilities may be installed, operated, and maintained on the Water Supply System right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon the request of the Subcontractor or the Contractor, the accuracy of such measurements shall be investigated by the Contracting Officer or the Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

(d) Neither the United States, the Contractor, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water beyond the delivery point(s) agreed to pursuant to Subarticle 4.5(a). The Subcontractor shall hold the United States, the Contractor, and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Subcontractor's control, carriage, handling, use, disposal, or distribution of such water beyond said delivery point(s).

4.6 Temporary Reductions. In addition to the right of the United

1 States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or
2 reduce the amount of water to be delivered, the United States or the Operating Agency
3 may, after consultation with the Contractor, temporarily discontinue or reduce the quantity
4 of water to be furnished to the Subcontractor as herein provided for the purposes of
5 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities
6 or any part thereof necessary for the furnishing of water to the Subcontractor, but so far as
7 feasible the United States or the Operating Agency shall coordinate any such
8 discontinuance or reduction with the Subcontractor and shall give the Subcontractor due
9 notice in advance of such temporary discontinuance or reduction, except in case of
10 emergency, in which case no notice need be given. Neither the United States, its officers,
11 agents, and employees, nor the Operating Agency, its officers, agents, and employees,
12 shall be liable for damages when, for any reason whatsoever, any such temporary
13 discontinuance or reduction in delivery of water occurs. If any such discontinuance or tem-
14 porary reduction results in deliveries to the Subcontractor of less water than what has been
15 paid for in advance, the Subcontractor shall be entitled to be reimbursed for the appropriate
16 proportion of such advance payments prior to the date of the Subcontractor's next payment
17 of water service charges or the Subcontractor may be given credit toward the next payment
18 of water charges if the Subcontractor should so desire.

18 4.7 Priority in Case of Shortage. Subject to the provisions of Section
19 304(e) of the Basin Project Act, any Project Water furnished for non-Indians through Project
20 facilities shall, in the event of shortage thereof, as determined by the Contracting Officer
21 after consultation with the Contractor, be reduced pro rata until exhausted, first for
22 Miscellaneous Water uses and next for Agricultural Water uses before water furnished for
23 non-Indian M&I use is reduced. Thereafter, water for M&I uses shall be reduced pro rata
24 among all non-Indian M&I users. All Project Water converted from agricultural to M&I use
25 shall be delivered with the same priority as other Project M&I Water. Pursuant to the
26 authority vested in the Secretary by the Reclamation Act of 1902 (32 Stat. 388), as

1 amended and supplemented, the Basin Project Act, the Regulations for Implementing the
2 Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1505), and
3 the Implementing Procedures of the U. S. Department of the Interior (516 DM 5.4), the
4 relative priorities between Indian and non-Indian uses will be determined by the Secretary
5 consistent with the allocations published in the Federal Register on March 24, 1983.

6 4.8 Secretarial Control of Return Flow.

7 (a) The Secretary reserves the right to capture all Return Flow
8 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
9 and for distribution to and use of the Central Arizona Project to the fullest extent practicable.

10 The Secretary also reserves the right to capture for Project use Return Flow which
11 originates or results from water contracted for from the Central Arizona Project within the
12 boundaries of the Contractor's Service Area if, in his judgment, such Return Flow is not
13 being put to a beneficial use. The Subcontractor may recapture and reuse or sell its Return
14 Flow; Provided, however, That such Return Flow may not be sold for use outside Maricopa,
15 Pinal, and Pima Counties; and Provided, further, That this does not prohibit effluent
16 exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor shall, at least 60
17 days in advance of any proposed sale of such water, furnish the following information in
18 writing to the Contracting Officer and the Contractor:

- 19 (i) The name and address of the prospective buyer.
- 20 (ii) The location and proposed use of the Return Flow.
- 21 (iii) The price to be charged for the Return Flow.

22 (b) The price charged for the Return Flow may cover the cost
23 incurred by the Subcontractor for Project Water plus the cost required to make the Return
24 Flow usable. If the price received for the Return Flow is greater than the costs incurred by
25 the Subcontractor, as described above, the excess amount shall be forthwith returned by
26 the Subcontractor to the Contractor for application against the Contractor's Repayment
Obligation to the United States. Costs required to make Return Flow usable shall include

1 but not be limited to capital costs and OM&R costs including transportation, treatment, and
2 distribution, and the portion thereof which may be retained by the Subcontractor shall be
3 subject to the advance approval of the Contractor and the Contracting Officer.

4 (c) Any Return Flow captured by the United States and
5 determined by the Contracting Officer and the Contractor to be suitable and available for
6 use by the Subcontractor may be delivered by the United States or Operating Agency to the
7 Subcontractor as a part of the water supply for which the Subcontractor subcontracts
8 hereunder and such water shall be accounted and paid for pursuant to the provisions
9 hereof.

10 (d) All capture, recapture, use, reuse, and sale of Return Flow
11 under this article shall be in accord with Arizona water law unless such law is inconsistent
12 with the Congressional directives applicable to the Central Arizona Project.

13 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
14 this subcontract, shall comply with all applicable water and air pollution laws and regulations
15 of the United States and the State of Arizona and shall obtain all required permits or
16 licenses from the appropriate Federal, State, or local authorities.

17 * * *

18 4.10 Quality of Water. The operation and maintenance of Project
19 facilities shall be performed in such manner as is practicable to maintain the quality of water
20 made available through such facilities at the highest level reasonably attainable as
21 determined by the Contracting Officer. Neither the United States, the Contractor, nor the
22 Operating Agency warrants the quality of water and is under no obligation to construct or
23 furnish water treatment facilities to maintain or better the quality of water. The
24 Subcontractor waives its right to make a claim against the United States, the Operating
25 Agency, the Contractor, or another subcontractor because of changes in water quality
26 caused by the commingling of Project Water with other water.

4.11 Exchange Water.

(a) Where the Contracting Officer determines the Subcontractor
is physically able to receive Colorado River mainstream water in exchange for or in

1 replacement of existing supplies of water from surface sources other than the Colorado
2 River, the Contracting Officer may require that the Subcontractor accept said mainstream
3 water in exchange for or in replacement of said existing supplies pursuant to the provisions
4 of Section 304(d) of the Basin Project Act; Provided, however, That a subcontractor on the
5 Project aqueduct shall not be required to enter into exchanges in which existing supplies
6 of water from surface sources are diverted for use by other subcontractors downstream on
the Project aqueduct.

7 (b) If, in the event of shortages, the Subcontractor has yielded
8 water from other surface water sources in exchange for Colorado River mainstream water
9 supplied by the Contractor or the Operating Agency, the Subcontractor shall have first
10 priority against other users supplied with Project Water that have not yielded water from
11 other surface water sources but only in quantities adequate to replace the water so yielded.

12 4.12 Entitlement to Project M&I Water.

13 (a) For the Year in which the Secretary issues the Notice of
14 Completion of the Water Supply System, the Subcontractor's entitlement to Project Water
15 for M&I uses shall be determined by the Contractor after consultation with the
16 Subcontractor and the Contracting Officer. Commencing with the Year following that in
17 which the Secretary issues the Notice of Completion of the Water Supply System, the
18 Subcontractor is entitled to take a maximum of _____ acre-feet of Project Water for M&I
19 uses including but not limited to ground water recharge.

20 (b) If at any time during the term of this subcontract there is
21 available for allocation additional M&I Project Water, or Agricultural Water converted to M&I
22 use, it shall be delivered to the Subcontractor at the same water service charge per
23 acre-foot and with the same priority as other M&I Water, upon execution or amendment of
24 an appropriate subcontract among the United States, the Contractor, and the Subcontractor
25 and payment of an amount equal to the acre-foot charges previously paid by other
26 subcontractors pursuant to Article 5.2 hereof plus interest. In the case of Agricultural Water

1 conversions, the payment shall be reduced by all previous payments of agricultural capital
2 charges for each acre-foot of water converted. The interest due shall be calculated for the
3 period between issuance of the Notice of Completion of the Water Supply System and
4 execution or amendment of the subcontract using the weighted interest rate received by the
Contractor on all investments during that period.

5 4.13 Delivery of Project Water Prior to Completion of Project Works.

6 Prior to the date of issuance of the Notice of Completion of the Water Supply System by
7 the Secretary, water may be made available for delivery by the Secretary on a "when
8 available" basis at a water rate and other terms to be determined by the Secretary after
9 consultation with the Contractor.

10 5. PAYMENTS:

11
12 5.1 Water Service Charges for Payment of Operation, Maintenance,
13 and Replacement Costs. Subject to the provisions of Article 5.4 hereof, the Subcontractor
14 shall pay in advance for Project OM&R costs estimated to be incurred by the United States
15 or the Operating Agency. At least 15 months prior to first delivery of Project Water, or as
16 soon thereafter as is practicable, the Contractor shall furnish the Subcontractor with an
17 estimate of the Subcontractor's share of OM&R costs to the end of the initial Year of water
18 delivery and an estimate of such costs for the following Year. Within a reasonable time of
19 the receipt of said estimates, as determined by the Contractor, but prior to the delivery of
20 water, the Subcontractor shall advance to the Contractor its share of such estimated costs
21 to the end of the initial month of water delivery and without further notice or demand shall
22 on or before the first day of each succeeding month of the initial Year of water delivery and
23 the following Year advance to the Contractor in equal monthly installments the Sub-
24 contractor's share of such estimated costs. Advances of monthly payments for each
25 subsequent Year shall be made by the Subcontractor to the Contractor on the basis of
26 annual estimates to be furnished by the Contractor on or before June 1 preceding each said

subsequent Year and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent Year. Differences between actual OM&R costs and estimated OM&R costs shall be determined by the Contractor and shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion of the Contractor the amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contractor may increase the annual estimate of the Subcontractor's OM&R costs by written notice thereof to the Subcontractor, and the Subcontractor shall forthwith increase its remaining monthly payments in such Year to the Contractor by the amount necessary to cover the insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contractor in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the Subcontractor and the Contractor.

5.2 M&I Water Service Charges.

(a) Subject to the provisions of Article 5.4 hereof and in addition to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance of the delivery of Project M&I Water by the United States or the Operating Agency, make payment to the Contractor in equal semiannual installments of an M&I Water service capital charge based on a maximum entitlement of _____ acre-feet per year multiplied by the rates set forth in the following schedule.

<u>Payment for the</u> <u>calendar year of</u>	<u>Payment due for each acre-</u> <u>foot of purchased capacity</u>
1988-1993	\$ 5
1994	6
1995	8
1996	10
1997	12
1998	14
1999	15
2000	16
2001	17
2002	18
2003	19

1	2004	20
2	2005	21
3	2006	22
4	2007	23
5	2008	24
6	2009	25
7	2010	26
8	2011	27
9	2012	28
10	2013	29
11	2014	30
12	2015	31
13	2016	32
14	2017	33
15	2018	34
16	2019	35
17	2020	36
18	2021	37
19	2022	38
20	2023	39
21	2024	40
22	2025 - through the end of the	40
23	term of this subcontract	

(b) The M&I Water service capital charge may be adjusted periodically by the Contractor as a result of repayment determinations provided for in the Repayment Contract and to reflect all sources of revenue, but said charge per acre-foot shall not be greater than the amount required to amortize Project capital costs allocated to the M&I function and determined by the Contracting Officer to be a part of the Contractor's Repayment Obligation. Such amortization shall include interest at 3.342 percent per annum. If any adjustment is made in the M&I Water service capital charge, notice thereof shall be given by the Contractor to the United States and to the Subcontractor on or before June 1 of the Year preceding the Year the adjusted charge becomes effective. The M&I Water service capital charge payment for the initial Year shall be advanced to the Contractor in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year; Provided, however, That the payment of the initial M&I Water service capital charge shall not be due until the Year in which Project Water is available to the Subcontractor after Notice of Completion of the Water Supply System is issued. Thereafter, for each subsequent Year, payments by the Subcontractor in

accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by the Contractor in written notices to the Subcontractor.

(c) On or before the first anniversary of execution of this subcontract and on or before each succeeding anniversary, the Subcontractor shall pay, in addition to all other payments required herein, an M&I subcontract charge. The subcontract charge shall be \$2.00 per acre-foot for _____ acre-feet of M&I Water. Prior to the date of issuance of the Notice of Completion of the Water Supply System, the subcontract charge shall be paid each Year by the Subcontractor to the United States. The Contracting Officer shall advise the Contractor of the amounts and dates of the Subcontractor's payments. After the date of issuance of the Notice of Completion of the Water Supply System, the subcontract charge shall be paid each Year to the Contractor by the Subcontractor and the Contractor shall credit the revenues obtained from the subcontract charge against the Subcontractor's water service charges payable to the Contractor that Year.

(d) Funds advanced to the United States by the Subcontractor pursuant to Article 5.2(c) as a subcontracting charge shall be credited by the Contractor against the Subcontractor's initial capital charges for water deliveries under this subcontract. Credit provided to the Subcontractor shall include interest from the date the Subcontractor's funds are transferred to the United States through the effective date of credit for payment of capital costs as recorded in the Contractor's records. Interest credited to the Subcontractor shall be at an annual rate of 1 (one) percent less than the weighted rate received by the Contractor on all investments during the period for which the Subcontractor's payments earn an interest credit.

(e) Payment of all M&I Water service capital and corresponding OM&R charges becoming due hereunder prior to or on the dates stipulated

in Articles 5.1 and 5.2 is a condition precedent to receiving M&I Water under this subcontract.

INSERT (f) for Cities and Towns

(f) All payments to be made to the Contractor or the United States under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments fall due from revenues legally available to the Subcontractor for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing authority of the Subcontractor, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this subcontract, nor shall such sources be liable for the payments, contributions, and other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the Subcontractor for the applicable budget year; and Provided, further, That no portion of this agreement shall ever be construed to create an obligation superior in lien to or on a parity with the Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the Subcontractor may meet its obligations hereunder and make in full all payments required under this subcontract on or before the date such payments become due.

5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery of water from Project facilities during any period in which the Subcontractor may be in arrears in the payment of any charges due the Contractor. The Contractor may sell to another entity any water determined to be available under the Subcontractor's entitlement for which payment is in arrears; Provided, however, that the Subcontractor may regain the right to use any unsold portion of the water determined to be available under the original entitlement upon payment of all delinquent charges plus any difference between the

subcontractual obligation and the price received in the sale of the water by the Contractor and payment of charges for the current period.

5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or refuses in any Year to accept delivery of the quantity of water available for delivery to and required to be accepted by it pursuant to this subcontract, or in the event the Subcontractor in any Year fails to submit a schedule for delivery as provided in Article 4.4 hereof, said failure or refusal shall not relieve the Subcontractor of its obligation to make the payments required in this subcontract.

5.5 Charge for Late Payments. The Subcontractor shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; Provided, That the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

6. GENERAL PROVISIONS:

6.1 Repayment Contract Controlling. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Project Water to the various subcontractors within the Project Service Area; and the Contractor has obligated itself for the payment of various costs, expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the Repayment Contract. The Subcontractor expressly approves and agrees to all the terms presently set out in the Repayment Contract including Subarticle 8.8(b)(viii) thereof, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent exchange agreements with Indian entities which have received an allocation of

1 Project Water and receive all benefits from the exchange. If the Subcontractor chooses to
2 exchange directly with the Indians, then the Subcontractor's entitlement to Project Water
3 shall be reduced by the amount of Project Water received in exchange by the
4 Subcontractor. The Subcontractor may also offer raw sewage or effluent to the Contractor
for the purpose of exchanging such sewage or effluent for the benefit of all subcontractors.

5 If such an exchange is consummated, the Subcontractor's entitlement to Project Water
6 shall remain at the level specified in Article 4.12. A copy of the above referenced
7 agreements shall be filed with the Contractor and the Contracting Officer.

8 6.3 Notices. Any notice, demand or request authorized or required by
9 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
10 delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O.
11 Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
12 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
13 Phoenix, Arizona 85080-3020, on behalf of the United States or Subcontractor; and to the
14 _____, Arizona 85_____, on behalf of the United
15 States or Contractor. The designation of the addressee or the address may be changed
16 by notice given in the same manner as provided in this Article for other notices.

13 6.4 Water Conservation Program.

14 (a) While the contents and standards of a given water
15 conservation program are primarily matters of State and local determination, there is a
16 strong Federal interest in developing an effective water conservation program because of
17 this subcontract. The Subcontractor shall develop and implement an effective water
conservation program for all uses of water which is provided from or conveyed through
Federally constructed or Federally financed facilities. That water conservation program
shall contain definite goals, appropriate water conservation measures, and time schedules
for meeting the water conservation objectives.

18 (b) A water conservation program, acceptable to the
19 Contractor and the Contracting Officer, shall be in existence prior to one or all of the
20 following: (1) service of Federally stored/conveyed water; (2) transfer of operation and
21 maintenance of the Project facilities to the Contractor or Operating Agency; or (3) transfer
22 of the Project to an operation and maintenance status. The distribution and use of
23 Federally stored/conveyed water and/or the operation of Project facilities transferred to the
24 Contractor shall be consistent with the adopted water conservation program. Following
25 execution of this subcontract, and at subsequent 5-year intervals, the Subcontractor shall
26 resubmit the water conservation plan to the Contractor and the Contracting Officer for

review and approval. After review of the results of the previous 5 years and after consultation with the Contractor, the Subcontractor, and the Arizona Department of Water Resources or its successor, the Contracting Officer may require modifications in the water conservation program to better achieve program goals.

6.5 Rules, Regulations, and Determinations.

(a) The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor and Subcontractor for consultation, rules and regulations consistent with the provisions of this subcontract, the laws of the United States and the State of Arizona, to add to or to modify them as may be deemed proper and necessary to carry out this subcontract, and to supply necessary details of its administration which are not covered by express provisions of this subcontract. The Contractor and Subcontractor shall observe such rules and regulations.

(b) Where the terms of this subcontract provide for action to be based upon the opinion or determination of any party to this subcontract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor or Subcontractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor or Subcontractor and shall be conclusive upon the parties.

6.6 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this subcontract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this subcontract if made with a corporation or company for its general benefit.

(b) No official of the Subcontractor shall receive any benefit that may arise by reason of this subcontract other than as a water user within the Project and in the same manner as other water users within the Project.

6.7 Assignment Limited--Successors and Assigns Obligated. The provisions of this subcontract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this subcontract or any part or interest therein shall be valid until approved by the Contracting Officer.

6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate court of the United States or the State of Arizona which would otherwise be available to such parties even though provisions herein may declare that determinations or decisions of the Secretary or other persons are conclusive or (b) as depriving any party of any defense thereto which would otherwise be available.

6.9 Books, Records, and Reports. The Subcontractor shall establish

and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this subcontract.

6.10 Equal Opportunity. During the performance of this subcontract, the Subcontractor agrees as follows:

(a) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants shall receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Subcontractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the Subcontractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Subcontractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Subcontractor shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this subcontract or with any of the such rules, regulations, or orders, this subcontract may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Subcontractor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of

said amended Executive Order, so that such provisions shall be binding upon each subcontractor or vendor. The Subcontractor shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Subcontractor may request the United States to enter into such litigation to protect the interest of the United States.

6.11 Title VI, Civil Rights Act of 1964.

(a) The Subcontractor agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Subcontractor receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Subcontractor by the United States, this assurance obligates the Subcontractor, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Subcontractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Subcontractor for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Subcontractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Subcontractor recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Subcontractor, its successors, transferees, and assignees.

6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek a final decree of the proper court of the State of Arizona approving and confirming the subcontract and decreeing and adjudging it to be lawful, valid, and binding on the Subcontractor. The Subcontractor shall furnish to the United States a certified copy of such decree and of all pertinent supporting records. This subcontract shall not be binding on the United States, the Contractor, or the Subcontractor until such final decree has been entered.

6.13 Contingent on Appropriation or Allotment of Funds.

1 The expenditure or advance of any money or the performance of any work by the United
2 States hereunder which may require appropriation of money by the Congress or the
3 allotment of funds shall be contingent upon such appropriation or allotment being made.
4 The failure of the Congress to appropriate funds or the absence of any allotment of funds
5 shall not relieve the Subcontractor from any obligation under this subcontract. No liability
6 shall accrue to the United States in case such funds are not appropriated or allotted.

7
8 IN WITNESS WHEREOF, the parties hereto have executed this subcontract

9 No. _____ the day and year first above-written.

10 Legal Review and Approval

11 THE UNITED STATES OF AMERICA

12 By: _____
13 Field Solicitor
14 Phoenix, Arizona

15 By: _____
16 Regional Director
17 Lower Colorado Region
18 Bureau of Reclamation

19 CENTRAL ARIZONA WATER
20 CONSERVATION DISTRICT

21 Attest: _____
22 Secretary

23 By: _____
24 President

25 [ENTITY] _____

26 Attest: _____

By: _____

Title: _____

Title: _____

27 A:\form-m&l subk.wpd

EXHIBIT 12.1
TUCSON AGREEMENT

TUCSON AGREEMENT

This Special Settlement Agreement is made and entered by and among the plaintiffs the Tohono O'odham Nation, a federally recognized Indian tribe ("Nation"), two classes of San Xavier Allottees and Fee Owners of Allotted Land (collectively "San Xavier Allottees") and the United States and defendant City of Tucson, a municipal corporation ("City"), relates to the San Xavier Reservation and the eastern Schuk Toak District, and is effective on the "Enforceability Date" of the Southern Arizona Water Rights Settlement Amendments Act of 2003 ("SAWRSA Amendments"). This Special Settlement Agreement is to be referred to as the "Tucson Agreement."

RECITALS:

A. The Nation, the San Xavier Allottees, and the United States are plaintiffs in United States et al. v. the City of Tucson et al., CV 75-39 TUC FRZ (consolidated with CV 75-051), consolidated for administrative purposes with Felicia Alvarez et al. v. City of Tucson, et al., CV 93-039 TUC FRZ and Gerald D. Adams, et al. v. United States of America, CV 93-240 TUC FRZ (the "Consolidated Litigation").

B. The City is one of several defendants in the Consolidated Litigation.

C. In order to reach settlement of the Consolidated Litigation, the defendant City agrees with the plaintiff parties that there are certain issues that can best be resolved between the City and the plaintiffs without reference to the other defendants.

D. As a part of the settlement of the Consolidated Litigation, as against the City, the Nation and the San Xavier Allottees have requested that the City provide funds for the future reparation of Sinkholes. The City denies any responsibility or liability for the Sinkholes on the San Xavier Reservation. However, in order to avoid future claims and to reach full settlement of the Consolidated Litigation, the City is agreeing to provide funds as more fully set forth below.

E. In settlement of the Consolidated Litigation as against the City and in consideration for timely performance of the City's obligations pursuant to this Agreement, the United States, the Nation and the San Xavier Allottees agree to waive and limit certain claims for injuries to land as more fully set forth below.

F. Execution of the Tucson Agreement is a requirement of the Settlement Agreement, is referred to in Paragraph 12 of the Settlement Agreement and a copy of the Tucson Agreement is attached as Exhibit 12.1 of the Settlement Agreement.

G. In the event that the Secretarial statement of findings described in the SAWRSA Amendments is not published as provided in the SAWRSA Amendments and the SAWRSA Amendments do not take effect, the parties agree that this Tucson Agreement shall be void and of no further effect.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and covenants agreed to herein the parties agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the terms used shall have the meanings defined in paragraph 2 of the Tohono O'odham Settlement Agreement. In addition, the following terms have the following respective meanings:

1.1 The term "Land Subsidence" means injury to land, water or other real property, resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling is caused by the pumping of water; land subsidence shall not include "Sinkholes" as defined herein.

1.2 The term "Sinkholes" means sinks, sinkholes or depressions occurring within the San Xavier Reservation and thought to be caused by several types of compaction and erosion of near surface materials. Sinkholes typically range in size and depth from shallow depressions of a few inches to 20 feet with steep sides.

ARTICLE 2. SINKHOLE REPARATION

2.1 Sinkhole Fund. Without admitting responsibility or liability for Sinkholes and as a part of the settlement of the Consolidated Litigation, the City agrees, upon timely adoption by the San Xavier District of the resolution described in Paragraph 2.2, to pay to the San Xavier District, in installments as provided below, the sum of Three Hundred Thousand Dollars (\$300,000), to be held by the San Xavier District in a separate interest bearing account, for the reparation of sinkholes (the "San Xavier Sinkhole Repair Fund"). The money shall be payable by the City to the San Xavier District in five annual installments of \$60,000 each, the first installment of which shall be paid on or before the 180th day after the Enforceability Date, and the remaining four installments shall each be paid on or before the anniversary date of the previous payment. The City shall bear no responsibility or liability whatsoever for the maintenance or management of such funds once paid in accordance with this Paragraph.

2.2 Use of Proceeds from the Sinkhole Fund. The resolution to be adopted by the San Xavier District will specify a procedure for the Nation and beneficial owners of land located on the San Xavier Reservation to obtain repairs of Sinkholes located on their land on the San Xavier Reservation, and will be adopted within ninety (90) days after the Enforceability Date. The District Council resolution shall provide that:

2.2.1 the cost of such repairs shall be paid from the San Xavier Sinkhole Repair Fund;

2.2.2 expenditures shall be made from the San Xavier Sinkhole Repair Fund for no other purpose;

2.2.3 if, at any time after ten (10) Years have elapsed after the Year in which the Enforceability Date occurs, no claims for sinkhole repairs have been received by the San Xavier District for a period of five (5) Years, and no expenditures have been made from the Fund for a period of five (5) Years, the San Xavier District may use any monies remaining in the San Xavier Sinkhole Repair Fund for projects to benefit and protect lands on the San Xavier Reservation, including, but not limited to, recharge, soil conservation, bank protection, erosion control and flood control.

ARTICLE 3. RELEASE AND LIMITATIONS OF CLAIMS

3.1 Release of Claims by the Nation. The Nation, and the United States as trustee for the Nation, waive and release--

3.1.1 Land-related Claims. Any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.2 Release of Claims by the San Xavier Allottees. The San Xavier Allottees, and the United States as trustee for the San Xavier Allottees, waive and release--

3.2.1 Land-related Claims. Any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.3 Effective Date of Releases. The releases of claims as provided herein shall be effective on the Enforceability Date.

3.4 Preservation of Claims for Land-related Injuries. With the exception of claims for injuries to land resulting from Sinkholes pursuant to Paragraph 3.1.1, there are preserved to the Nation, claims for Land Subsidence, erosion or other injuries to land within the San Xavier Reservation or eastern Schuk Toak District, if any ("Claim"), provided that any such Claim is brought in accordance with the procedures established below.

3.4.1 Administrative Procedure.

3.4.1.1 The Nation will not initiate a suit unless the Nation has filed a Claim with the City Manager and followed the procedures outlined in this Paragraph 3.4.1. The Claim shall contain sufficient facts to enable the City to review the basis for liability, including a written opinion of an expert engaged by the Nation which concludes that there is

reasonable basis for the Claim, including causation, in whole or in part, by the City. The opinion shall be filed with the Claim or within one hundred and eighty (180) days after the filing date of the Claim. The opinion shall not be deemed by the City to be a public record or disclosed to the public and may only be used for the purpose of resolving the Claim with the Nation either through the administrative procedure established herein or in a subsequent lawsuit filed by the Nation under this Agreement.

3.4.1.2 The City shall issue a decision on the Claim within Ninety (90) days after the later of the date the Claim is filed or the expert opinion is submitted. If no decision is issued within such period, the Nation may, at its option, deem the Claim denied. Any decision which offers a remedy to the Nation shall be deemed rejected if the Nation fails to respond or rejects the decision in writing within ninety (90) days after receipt.

3.4.1.3 The Nation shall not file suit against the City until the Nation receives a decision denying the Claim or the Claim is deemed denied.

3.4.1.4 During the period from the date a Claim is filed through the date of decision or deemed denial, any applicable statute of limitations shall be tolled.

3.4.2 Remedies. The Nation shall be entitled to seek whatever relief may be available under applicable law as relief for a Claim.

3.4.3 No Intention to Create a Cause of Action. The parties do not intend, by this Agreement, to create any cause of action for any claims by the Nation for Land Subsidence, erosion or other injuries to land. References in this Agreement to the preservation of claims for Land Subsidence, erosion or other injuries to land is not an agreement or recognition by the City that any such claims or causes of action exist under the law.

ARTICLE 4.

JURISDICTION; LAW; DEFAULT AND REMEDIES

4.1 Applicable Law and Jurisdiction. The parties recognize and agree that all actions arising under this Agreement, including any Claim by the Nation against the City (a) arises under and is governed by the laws of the United States and (b) personal and subject matter jurisdiction with respect thereto is vested the Gila River Adjudication Court. The United States District Court for the District of Arizona (the "Federal Court") shall have concurrent jurisdiction to the extent otherwise provided by Federal law. Neither the other courts of the State of Arizona nor the courts of the Nation shall have jurisdiction over actions brought pursuant to this Agreement including any action brought for a Claim preserved to the Nation pursuant to Paragraph 3.4 of this Agreement.

4.2 Event of Default; Enforcement. Failure to remedy a breach of this Agreement, after written notice and a ninety (90) calendar day opportunity to cure the breach, shall constitute an event of default. Any action to enforce this Agreement against the City shall be brought and maintained by the Nation or the United States.

4.3 Remedies. Remedies for default shall be limited to termination of this Agreement, injunctive relief or, as against the City, for damages pursuant to Paragraph 3.4.

4.4 Waiver of Immunity. The immunity from suit of the United States, the Nation and the City is hereby waived solely for declaratory judgment or injunctive relief in any action arising under this Agreement. A waiver of immunity under this Agreement shall not extend to any claims for costs, attorneys' fees or other monetary relief, except that the City waives any immunity it might have for damages in the event that a Claim is made after the requirements of Paragraph 3.4 of this Agreement have been met.

ARTICLE 5. MISCELLANEOUS

5.1 Term. This Agreement is perpetual and commences on the Enforceability Date.

5.2 Notices. Notice required pursuant to the terms of this Agreement shall be in writing, and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such party set forth herein, or to such other address as shall have previously been specified in writing by such party to all parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, AZ 85634

With copies to:

Attorney General
Tohono O'odham Nation
P.O. Box 1202
Sells, AZ 85634

Chairperson
San Xavier District
2018 W. San Xavier Road
Tucson, AZ 85746

Law Offices of Louis W. Barassi
485 South Main Avenue
Tucson, AZ 85701

Chairperson
Schuk Toak District
P.O. Box 368
Sells, AZ 85634

City:

City Manager
City of Tucson
P.O. Box 27210
Tucson, AZ 85726-7210

With copies to:

Director
Tucson Water
P.O. Box 27210
Tucson, AZ 85726-7210

City Attorney
P.O. Box 27210
Tucson, AZ 85726-7210

San Xavier Allottees:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, AZ 85746

With a copy to:

Thomas E. Luebben
Luebben, Johnson & Young LLP
211 12th Street NW
Albuquerque, NM 87012

United States:

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

5.3 Full Understanding. The parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advice of independent counsel prior to executing it.

5.4 Neutral Construction. Counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

5.5 Binding on Successors. This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the parties.

5.6 Multiple Counterparts. This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the parties hereto, such counterparts taken together shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized; each of which shall be deemed an original document.

5.7 Further Actions. The parties agree to execute all contracts, agreements and documents, and to take all further actions reasonably necessary, as may be required to comply with the provisions of this Agreement and the intent hereof.

APPROVED AS TO FORM

By _____
City Attorney

CITY OF TUCSON

By _____
Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM

By _____
Attorney General

TOHONO O'ODHAM NATION

By _____
Chairperson

APPROVED AS TO FORM

LUEBBEN, JOHNSON & YOUNG LLP

By _____
Attorney for Certified Class

UNITED STATES v. TUCSON SAN XAVIER
ALLOTTEE CLASS

By _____

Its Class Representatives

APPROVED AS TO FORM

ALVAREZ V. TUCSON ALLOTTEE CLASS

LUEBBEN, JOHNSON & YOUNG LLP

By _____
Attorney for Certified Class

By _____

Its Class Representatives

THE UNITED STATES OF AMERICA

By _____
Secretary of the Interior

EXHIBIT 13.1
ASARCO AGREEMENT

ASARCO SETTLEMENT AGREEMENT

This settlement agreement is made and entered into by and among the Tohono O'odham Nation, a federally recognized Indian Tribe ("Nation"), the San Xavier District ("District"), three classes of San Xavier allottees (collectively "San Xavier Allottees"), the United States, and Asarco Incorporated, a New Jersey corporation ("Asarco") who are each a Party hereto and are collectively referred to as "Parties", and is effective on the Enforceability Date of the Southern Arizona Water Rights Settlement Amendments Act of 2003 ("Amendments"). This settlement agreement is referred to as this "Agreement."

RECITALS:

A. The Nation, the San Xavier Allottees and the United States are plaintiffs in United States v. Tucson, et al., a class action pending in the United States District Court for the District of Arizona (Civ. No. 75-39 TUC consolidated with Civ. No. 75-51 TUC-FRZ) and related litigation ("Litigation").

B. Asarco is one of several defendants in the Litigation.

C. In order to reach a final settlement of the unconsolidated portions of the Litigation, there are certain issues that may be resolved herein among the parties to this Agreement without reference to the other defendants in the Litigation.

D. The San Xavier Allottees are plaintiffs in Alvarez v. City of Tucson, et al., a class action pending in the United States District Court for the District of Arizona (No. CV 93-0039 TUC FRZ) ("Alvarez").

Now, therefore, in consideration of the mutual promises and covenants herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Accrual Date" means the date on which CAP water is first delivered to Asarco in lieu of groundwater pursuant to the terms of this Agreement.

1.2 "Accrual Period" is the fourteen-year period commencing with the Accrual Date.

1.3 "ADEQ" means the Arizona Department of Environmental Quality.

1.4 "ADWR" means the Arizona Department of Water Resources.

1.5 "Aquifer Protection Permit", or "APP," means any permits issued to Asarco by ADEQ pursuant to A.R.S. § 49-241 et seq. for the Mission Complex, and any amendments thereto.

1.6 "Boundaries of the Nation" means the geographic boundaries of the Tohono O'odham Nation, existing as of the Enforceability Date, including the San Xavier Reservation.

1.7 "Business Leases" means those 21 leases to Asarco of lands within the San Xavier Reservation for general mining purposes approved by the Bureau of Indian Affairs on May 12, 1959.

1.8 "CAP" or "Central Arizona Project" means the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

1.9 "Enforceability Date" means the "Enforceability Date" as defined in the Amendments.

1.10 "Environmental Purposes" means specific environmental requirements or activities that involve well maintenance, reclamation, Mine Plan compliance, Aquifer Protection Permit compliance, closure requirements, or applicable governmentally imposed dictates, orders, laws or regulations relating to the environment.

1.11 "Mine Plan of Operations," or "MPO," means that plan for operating the Mission Complex approved by the United States Bureau of Land Management pursuant to 25 CFR Part 216 and 43 CFR Subpart 3592, and any amendments to such plan.

1.12 "Mining Leases" means Contract No. 14-20-450-2750, Lease No. 454-2-60, and Contract No. 14-20-450-2741, Lease No. 454-3-60, effective September 18, 1959.

1.13 "Mission Complex" means all of the mine, mill, processing, tailings, waste, well, road, building, and related facilities and properties owned, leased or used by Asarco and located south and east of the San Xavier Reservation and related facilities located on the San Xavier Reservation.

1.14 "San Xavier District," or "District," means one of eleven political subdivisions of the Tohono O'odham Nation established under the constitution of the Nation, having boundaries coterminous with the San Xavier Reservation.

1.15 "San Xavier Reservation" means the San Xavier Indian Reservation existing as of the Enforceability Date as established by the Executive Order of July 1, 1874 which is a part of the Tohono O'odham Nation.

1.16 "Storage Credit" means a storage credit granted by ADWR pursuant to Arizona law.

1.17 "Termination Date" means (a) for CAP water used for mining and processing ore at the Mission Complex, the earlier of 25 years after the Enforceability Date or the completion of such use, and (b) for CAP water used for Environmental Purposes, the earlier of 25 years after the Enforceability Date or the completion of such use.

1.18 "Tucson Management Area," or "TMA," means the area of land corresponding to

the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980 (session laws of the State of Arizona, 1980, thirty-fourth legislature, fourth special session, chapter 1), subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area pursuant to Arizona Laws of 1994, Ch. 296), and that part of the Upper Santa Cruz Basin not within the area initially designated as the Tucson Active Management Area.

1.19 "Well Site Lease" means that certain business lease No. H54-16-72 dated April 26, 1972, of San Xavier Reservation land to Asarco and approved by the United States on November 14, 1972. "New Well Site Lease" means a lease to be entered into pursuant to the provisions of paragraph 3.4.

ARTICLE 2

CENTRAL ARIZONA PROJECT WATER

2.1 The Nation shall deliver up to 10,000 acre-feet per annum of its CAP allocation to Asarco for use, in lieu of groundwater, in its mining, milling, processing, Environmental Purposes and related operations at the Mission Complex under terms and conditions set forth in a water agreement. The water shall be delivered at the CAP turnout south of Pima Mine Road pursuant to orders placed by Asarco in a manner consistent with the Nation's contracts with the United States dated December 11, 1980 and October 11, 1983, including any amendments thereto that hereafter may be made.

2.2 In years one through five starting on the Accrual Date, the delivery fee shall be \$15 per acre foot delivered in lieu of water pumpable under the Well Site Lease, and \$20 per acre foot for water delivered in lieu of other groundwater pumping. On the 6th and each succeeding five-year anniversary of the Accrual Date the delivery charges shall increase by 13% over the previous charges and the new charges shall remain in effect for the succeeding five years. Asarco shall make payments of the delivery charges on a monthly basis within 30 days after delivery. In any year during the term of this Agreement that Asarco uses more than 10,000 acre-feet of CAP water in lieu of pumping groundwater for the Mission Complex, it shall use a minimum of 10,000 acre-feet of CAP water pursuant to this Agreement if such water is available thereunder.

2.3 Nothing herein shall be construed as prohibiting Asarco from utilizing its off-Reservation wells or water rights for any purpose.

2.4 On or before March 31 of each year commencing with the Accrual Date, Asarco will report to the Nation its Mission Complex CAP and groundwater use for the previous year.

2.5 The Parties may not seek to shut off, terminate or otherwise interfere with the CAP water delivered to Asarco pursuant to this Agreement, which is subject only to the remedies provided under Article 10 hereof.

2.6 The Nation's obligation to deliver CAP water to Asarco under the terms of this Article shall cease on the Termination Date, except that if the Termination Date is 25 years after the Enforceability Date and if Asarco continues mining and processing ore at the Mission

Complex after that date, the Nation shall have the option, at its sole discretion, to continue the obligation to deliver in lieu CAP water to Asarco for an additional period of not less than 10 years or more than 25 years.

2.7 If at any time during the 35-year period after the Enforceability Date, Asarco intends to use its grandfathered water rights listed in Article 8 hereof for any purpose other than mining that is compatible with the use of CAP water by Asarco and also is compatible with the delivery of CAP water by the Nation ("new use"), not less than 180 days prior to the commencement of the new use Asarco shall give the Nation and the San Xavier District notice of the intended new use and the quantity of water required for the new use. Within the 180-day period, the Nation, with the concurrence of the San Xavier District, may exercise the right to supply the new use with CAP water for the lesser of the life of the use or 25 years.

2.8 The delivery charges for CAP water delivered to Asarco under paragraphs 2.6 and 2.7 shall be the charges set forth in paragraph 2.2 for the acre-feet for which Storage Credits are earned and for the remaining water the delivery charge shall be the lesser of the then current market rate for CAP municipal and industrial water or Asarco's cost for pumping an equivalent amount of groundwater.

ARTICLE 3

SAN XAVIER WELL SITE LEASE

3.1 The Asarco option to renew the Well Site Lease for an additional 25-year term is hereby recognized as having been validly exercised as of November 14, 1997.

3.2 The rental adjustment provisions of 25 C.F.R. § 162.8 are hereby waived for the renewed Well Site Lease.

3.3 It is agreed among the parties that Asarco's rights to use water for the purposes described in paragraph 7 of the Well Site Lease shall include uses for San Xavier Reservation Environmental Purposes; provided that (a) the Nation and Asarco shall consult to determine whether a mutual agreement can be reached on the feasibility of first withdrawing water from Asarco's off-Reservation wells to use for San Xavier Reservation Environmental Purposes and (b) if it is necessary to withdraw water under the Well Site Lease for San Xavier Reservation Environmental Purposes which cannot reasonably be used on the San Xavier Reservation or to process San Xavier Reservation ore at the Mission Complex, the Nation and Asarco shall consult and use the water for a mutually agreed purpose.

3.4 Asarco agrees to reduce its pumping under the Well Site Lease by reducing such quantity by each acre-foot of CAP water delivered to Asarco under the Water Lease.

3.5 Except as otherwise provided herein, all other terms of the Well Site Lease shall remain in full force and effect.

3.6 If Asarco has not completed use of the wells for the purposes authorized under the Well Site Lease prior to its expiration date, the Nation and Asarco shall enter into a New Well Site Lease on the same material terms and conditions as the existing Well Site Lease except as

set forth below:

3.6.1 The effective date of the New Well Site Lease shall be the day following the termination date of the Well Site Lease, subject to approval of the Secretary of the Interior.

3.6.2 The term shall end on the earlier of (1) the date 25 years after the termination date of the Well Site Lease or (2) the date on which Asarco completes (A) mining and processing San Xavier Reservation ore and (B) use of water for San Xavier Reservation Environmental Purposes.

3.6.3 The following provisions shall be incorporated as affirmative rights and obligations:

3.6.3.1 Paragraphs 3.2 and 3.4 hereof;

3.6.3.2 Asarco agrees not to exercise the distance and use limitations on well development and operation prescribed in paragraph 5 of the Well Site Lease on the following conditions:

3.6.3.2.1 The Nation shall have the right to drill and operate a well, or grant such right to any person, at a site which is more than four tenths (.4) of a mile from any existing Asarco well operated under the Well Site Lease.

3.6.3.2.2 Water withdrawn from any such well may be used for any purpose, which does not interfere with Asarco's use rights under the New Well Site Lease.

3.6.3.2.3 Costs associated with the construction, operation, maintenance, repair or other activity related to any such well shall be solely the responsibility of the Nation, or any person granted rights to use the well.

3.6.3.2.4 Water withdrawn pursuant to this subparagraph 3.6.3.2 shall not exceed a total of 100 acre-feet during any calendar year.

3.6.3.3 Asarco agrees not to exercise the use and quantity limitations in paragraph 6 of the Well Site Lease related to direct withdrawals from Asarco wells on the following conditions:

3.6.3.3.1 The Nation shall have the right to withdraw water from any Asarco well, or grant such right to any person, and to use the water for any purpose that does not interfere with Asarco's use rights under the New Well Site Lease.

3.6.3.3.2 Asarco shall have the right to impose a charge on each acre-foot of water withdrawn by the Nation or the Nation's grantee which shall be no greater than Asarco's average operation, maintenance and repair costs for withdrawal of an acre-foot of water in the preceding calendar year. The Nation or other user shall pay the withdrawal charge within 15 days after the end of each month in which water is withdrawn.

3.6.3.3.3 Groundwater withdrawn pursuant to this paragraph 3.6.3.3 shall not exceed a total of 100 acre-feet during any calendar year.

3.6.4 Upon completion of processing San Xavier Reservation ore, the Nation shall have the right to withdraw the number of acre-feet of water directly or from constructed wells, as authorized by the Amendments, that does not interfere with Asarco's use or non-use of the wells for San Xavier Reservation Environmental Purposes.

3.6.5 Asarco shall make lease payments as follows: (1) until processing of San Xavier Reservation ore is complete (A) \$5 per acre-foot withdrawn and (B) paragraph 3.2 shall apply; and (2) effective as of the date San Xavier Reservation ore processing is completed, 25 CFR § 162.8 shall apply for the water withdrawable for San Xavier Reservation Environmental Purposes.

3.6.6 The provisions of this paragraph 3.6 shall not limit the Nation and Asarco from agreeing to negotiate a New Well Site Lease on other terms and conditions or for other purposes.

ARTICLE 4

CAP WATER DELIVERY INFRASTRUCTURE COSTS

4.1 Asarco shall construct and own the infrastructure necessary to take delivery of up to 10,000 acre-feet annually of CAP water under a water agreement at its own expense, except for the financing provided for in paragraph 4.2 below. Asarco may, in its discretion and at its expense, construct the infrastructure necessary to take delivery of additional water.

4.2 Upon Asarco's providing to the Nation reasonable security for any requested loan, the Nation will loan Asarco up to \$800,000 at Asarco's option for up to 14 years, plus interest at the rate of 6% per annum, compounded annually on the outstanding balance, to finance infrastructure costs necessary to make use of the CAP water pursuant to this Agreement. The loan shall be funded by the Nation in the manner that construction loans are normally funded upon being presented with evidence of the expenditures necessary for the construction of the infrastructure. The loan is to be repaid first by crediting Storage Credits earned as set forth in paragraph 5.3 of this Agreement and if any balance remains at the end of the term of the loan by Asarco in cash within 30 days.

4.3 The obligations under this Article 4 of this Agreement are independent of and separable from the remaining Articles of this Agreement. Even if this Article is not assumable or assignable under 11 U.S.C. §365 (c)(2), the remaining portion of this Agreement may be assumed or assigned even though executory.

ARTICLE 5

STORAGE CREDITS

5.1 Except as otherwise provided in this Agreement, Storage Credits earned under this Agreement shall be owned by the Nation.

5.2 Solely for purposes of this Agreement, each Storage Credit for one acre-foot of water shall be valued at \$40.

5.3 Any Storage Credits earned by the Nation shall first be treated as repayment of the principal and interest of the loan referred to in paragraph 4.2, and then shall be allocated as further provided by internal agreement between the Nation and the District.

ARTICLE 6

WAIVER AND RELEASE

6.1 The Nation, the District and the Allottees waive and release all claims against Asarco arising out of Asarco's withdrawal of water from beneath the ground within the Tucson Management Area from time immemorial through the Enforceability Date.

6.2 The Nation, the District and the Allottees waive and release all claims against Asarco that may arise after the Enforceability Date to the extent that such claims arise out of Asarco's withdrawal of water within the Tucson Management Area pursuant to its existing Type 1 and Type 2 state law water rights and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

6.3 The United States waives and releases all claims referred to in 6.1 and 6.2 above against Asarco in so far as said Claims relate to claims of the Allottees and the Nation within the Tucson Management Area.

6.4 Asarco waives and releases all claims against the United States, the Nation, the District and the Allottees arising out of their withdrawal of water from beneath the San Xavier Reservation and other land of the Nation within the Tucson Management Area on or before the Enforceability Date.

6.5 Asarco waives and releases all claims after the Enforceability Date against the United States, the Nation, the District and the Allottees to the extent that such claims arise out of their withdrawal of water as authorized under the Amendments, and hereby confirms such parties' rights to withdraw water as authorized by said Amendments.

ARTICLE 7

ALVAREZ LAWSUIT CLAIMS

7.1 Payments made by Asarco under this Agreement shall be made and disbursed as follows:

7.1.1 During the Accrual Period and commencing on the Accrual Date, payments for delivery of CAP in lieu water made under this Agreement shall be paid by Asarco into a fund to be called the "Alvarez Groundwater Settlement Fund" (the "Fund"), which shall be maintained as a segregated account by the San Xavier Allottees Association as provided in paragraph 7.2.

7.1.2 Asarco shall make additional payments to the Fund ("Advance Minimum Payments") within 30 days of the following specified anniversaries of the Accrual Date if required to ensure that the Fund has received the corresponding specified minimum cumulative totals of payments, exclusive of all interest or dividends earned by the Fund on balances in the Fund:

- (a) Second Anniversary - \$100,000.
- (b) Fifth Anniversary - \$350,000.
- (c) Eighth Anniversary - \$600,000.
- (d) Eleventh Anniversary - \$1,050,000.
- (e) Fourteenth Anniversary - \$1,500,000.

7.1.3 Any Advance Minimum Payments made by Asarco shall be credited against future charges for CAP in lieu water that would otherwise be due for water delivered under this Agreement.

7.1.4 When Asarco has paid a total of \$1.5 million of payments to the Fund, all subsequent payments due under this Agreement shall be paid by Asarco 55% to the Nation and 45% to the District.

7.2 The Board of Directors of the San Xavier Allottees Association ("Board") shall establish, maintain, control, invest, administer and expend the Fund. The Board shall establish a procedure for the orderly administration and protection of the corpus of the Fund. Payments from the Fund shall only be made upon written application showing a need for such compensation pursuant to the purposes of the Fund as stated herein. The Fund shall be expended by the Board at its discretion for an ongoing groundwater quality testing program; water supply development and individual or community water treatment systems to provide good quality water for any development that may take place in the future on lands affected by groundwater contamination, including but not limited to, Total Dissolved Solids ("TDS") and sulfate contamination within the San Xavier Reservation and within the Upper Santa Cruz subbasin as defined by ADWR; administration of the Fund by the Allottees Association; compensation payments to allottee landowners based upon a reasonable showing that TDS or sulfate levels in groundwater under their allotments are unsuitable for an existing or imminent use and for other purposes to be determined by the SXAA, including reimbursement to the District for Asarco-related Alvarez litigation expenses. The Nation shall be eligible to receive groundwater contamination benefits from the Fund on the same basis as any other owner of Indian trust lands on the San Xavier Reservation.

7.3 The San Xavier Allottees Association shall prepare and distribute to the San Xavier Allottee landowners an annual report of the financial status of the Fund on a calendar year basis. The Allottees Association shall provide a copy of such annual report to Asarco within 30 days of its completion and in no case later than 90 days after year-end. Asarco shall maintain the confidentiality of the annual report.

7.4 In the event Asarco fails to make any payment to the Fund when due under paragraph 7.1.2, any member of the allottee class in Alvarez may invoke any remedy available under Article 10 for the benefit of the Fund.

7.5 Subject to the conditions stated in the following subparagraphs, the Nation, the District, the San Xavier Allottees and the United States, to the extent of its trust responsibility, hereby waive and release Asarco from claims for damages arising out of the degradation of groundwater quality caused by (a) the withdrawal of groundwater by Asarco as permitted by the Well Site Lease, (b) the use of CAP water by Asarco pursuant to this Agreement or (c) Asarco's mining operations at the Mission Complex pursuant to the Mining Leases, the Business Leases, the Mine Plan of Operations and any Aquifer Protection Permit:

7.5.1 This waiver and release shall be effective only upon the Accrual Date.

7.5.2 This Article 7 and this waiver and release shall be of no force and effect if the Accrual Date has not occurred prior to the third anniversary of the Enforceability Date.

7.5.3 The named class representative plaintiffs (San Xavier Allottees) in Alvarez agree to file a stipulated motion to certify a non-opt-out subclass consisting of all original allottees, heirs and devisees of original allottees, and purchasers and grantees of allotments in the San Xavier Reservation, together with a stipulated motion to dismiss the plaintiffs' Fourth Cause of Action with prejudice, within 30 days of the commencement of the Accrual Period.

7.5.4 This waiver and release shall not be effective to the extent that Asarco's activities violate any federal or state law regulating discharges of toxic or hazardous substances to groundwater; as to which all common law, statutory and regulatory remedies shall be preserved.

ARTICLE 8

STATE LAW WATER RIGHTS

8.1 The Nation and the Allottees confirm the full validity of Asarco's existing certificated and permitted state law water rights listed as follows, copies of which are attached hereto as Exhibit 1, subject to the provisions of this Agreement:

Type 2 Right Certificate # 58-160032
Type 2 Right Certificate # 58-115187.0002
Type 2 Right Certificate # 58-100315.0004
Type 1 Right Certificate # 58-100306

8.2 Except in connection with a sale or transfer of the Mission Complex, or a substantial portion thereof, Asarco will provide the Nation and the District with 90-days notice of its intent to sell its Type 1 or Type 2 water rights to any buyer, together with the price and any substantive terms of the sale, who intends to use such rights for other than mining purposes, so that the Nation may have an opportunity to seek to acquire the property offered for sale. Information concerning any intent to sell, including information regarding the price and terms of

sale, shall be kept confidential by the Nation and the District. Nothing herein shall be deemed to constitute a right of first refusal or an option to buy Asarco's water rights.

ARTICLE 9

MISCELLANEOUS

9.1 Payment of the minimum royalties provided for in paragraphs V.A(2) and V.A(3) of the Settlement Agreement of November 3, 1971 in Cause No. CIV. 70-83 TUC shall be deemed to satisfy Asarco's covenants under the mining leases to diligently prospect, develop and operate the leased premises, and shall be deemed to constitute mining in paying quantities as required by paragraph 2 of such leases and any applicable laws.

9.2 Asarco will not unreasonably protest any groundwater recharge facility permit applications by the Nation or the District, or unreasonably oppose any unpermitted recharge facility on the San Xavier Reservation.

ARTICLE 10

REMEDIES

10.1 The party claiming a breach of this Agreement shall notify the offending party in writing of the alleged breach and provide the offending party a 60-day opportunity to cure prior to seeking enforcement of this Agreement.

10.2 The remedies of a party for breach of this Agreement shall be limited to equitable, declaratory and injunctive relief and shall not include the payment of damages, except for payments due from Asarco under this Agreement.

ARTICLE 11

GENERAL

11.1 Notice required pursuant to the terms of this Agreement shall be in writing and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such party set forth herein, or to such other address as shall have previously been specified in writing by such party to all parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, Arizona 85634

With copies to:

Attorney General
Tohono O'odham Nation
P.O. Box 1202
Sells, Arizona 85634

Asarco:

General Manager
Mission Complex
Asarco Incorporated
P.O. Box 111
Sahuarita, Arizona 85629

With a copy to:

Robert B. Hoffman
6035 N. 45th Street
Paradise Valley, Arizona 85253-4001

San Xavier District:

Chairman
San Xavier District Council
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Louis W. Barassi
Law Offices of Louis W. Barassi
485 So. Main Ave.
Tucson, AZ 85701

San Xavier Allottees:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Thomas E. Luebben
Luebben, Johnson & Young LLP
211 12th Street NW

Albuquerque, New Mexico 87012

United States of America;

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

11.2 The parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advise of independent counsel.

11.3 The Parties are aware of canons of interpretation where ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian Tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

11.4 This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the parties.

11.5 This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the parties thereto, such counterparts taken together shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized, each of which shall be deemed and original document.

11.6 The parties agree to execute all contracts, agreements and documents, to take all further action reasonably necessary as may be required to comply with the provisions of this

Agreement and the intent hereof and to cooperate with each other in effectuating this Agreement and carrying out its terms.

11.7 Should any party hereto be placed into bankruptcy under the laws of the United States, this Agreement, including all waivers and releases, will be of no force or effect unless all Articles hereof, except Article 4, are accepted in toto by the bankruptcy court or trustee as permitted by said laws.

DATED this _____ day of _____, 2003.

TOHONO O'ODHAM NATION

By _____
Chairman

UNITED STATES OF AMERICA

By _____
Secretary of the Interior

SAN XAVIER DISTRICT

By _____
Chairman

ASARCO INCORPORATED

By _____
President

UNITED STATES V. TUCSON ALLOTTEE CLASS

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Counts 1 through 3)

By: _____

By: _____

By: _____

By: _____

By: _____

Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Count 4)

By: _____

By: _____

By: _____

By: _____

By: _____

Its Class Representatives

EXHIBIT 14.1
FICO AGREEMENT

FICO SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and among the Tohono O'odham Nation, a federally recognized Indian Tribe ("Nation"), the San Xavier District ("District"), two classes of San Xavier allottees (collectively "San Xavier Allottees"), the United States, Farmers Investment Co., an Arizona corporation and Farmers Water Co., an Arizona corporation (collectively "FICO"), who are each a party hereto and are collectively referred to as "Parties," and is effective on the Enforceability Date of the Southern Arizona Water Rights Settlement Amendments Act of 2003 ("Amendments"). This Settlement Agreement is referred to as this "Agreement."

RECITALS:

A. The Nation, the San Xavier Allottees and the United States are plaintiffs in an action pending in the United States District Court for the District of Arizona (Civ. No. 75-39 TUC consolidated with Civ. No. 75-51 TUC-FRZ) and related litigation ("Litigation").

B. FICO is one of several defendants in the Litigation.

C. The Parties desire to reach a final settlement of the Litigation as between them.

D. The Nation, the San Xavier Allottees, and FICO are users of the water resources of the Upper Santa Cruz Basin and have a mutual interest in conserving those resources.

E. The Parties desire to further provide for water conservation.

F. The Parties further desire to release each other from certain claims and liabilities.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Enforceability Date. The term "Enforceability Date" means the "Enforceability Date" as defined in the Amendments.

1.2 FICO Lands. The term "FICO Lands" shall mean all lands owned by FICO described on Exhibit "A" hereto.

1.3 San Xavier District or District. The terms "San Xavier District" or "District" shall mean one of eleven political subdivisions of the Tohono O'odham Nation established under the constitution of the Nation, having boundaries coterminous with the San Xavier Reservation.

1.4 San Xavier Reservation. The term "San Xavier Reservation" shall mean the San Xavier Indian Reservation existing as of the Enforceability Date as established by the Executive Order of July 1, 1874, which is a part of the Tohono O'odham Nation.

ARTICLE 2

WITHDRAWALS

2.1 FICO agrees to limit total withdrawals of water from FICO Lands within two miles of the San Xavier Reservation as described in Exhibit B to no more than 850 acre-feet per annum on a three-year rolling average. This limit includes withdrawals of stored water as defined in A.R.S. § 45-802.01 on the Enforceability Date, except for withdrawals from a recovery well within one mile of an underground storage facility so long as the well is permitted only to recover storage credits accrued for water stored at that facility.

2.2 FICO agrees to limit withdrawals of water from all FICO Lands to 36,000 acre-feet per annum on a three-year rolling average not including withdrawals of stored water (as defined in A.R.S. § 45-802.01 on the Enforceability Date) that has been stored within these lands.

2.3 FICO agrees not to sell any groundwater credits accumulated pursuant to A.R.S. § 45-467 for use by third parties for withdrawal of water from within three miles of the exterior boundaries of the Tohono O'odham Nation as such boundaries exist on the Enforceability Date.

2.4 The Nation, the District and the San Xavier Allottees agree to limit their withdrawals from the San Xavier Reservation to those amounts authorized by the Amendments.

2.5 In order to monitor compliance with the limitations provided in this Article above, the Nation and FICO mutually agree to provide the other with water use reports on or before April 30 of each year for the year preceding. FICO may comply with this obligation by providing the Nation with a copy of relevant reports required to be filed under State law.

ARTICLE 3

WAIVER AND RELEASE

3.1 The Nation and the San Xavier Allottees waive and release all claims against FICO arising out of FICO's withdrawal of water from beneath the ground within the Tucson Management Area from time immemorial through the Enforceability Date.

3.2 The Nation and the San Xavier Allottees waive and release all claims against FICO that may arise after the Enforceability Date to the extent that such claims arise out of FICO's withdrawal of water within the Tucson Management Area pursuant to its existing Irrigation Type 1 and Type 2 state law water rights and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

3.3 The United States waives and releases all claims referred to in 3.1 and 3.2 above against FICO insofar as said claims relate to claims of the Allottees and the Nation within the Tucson Management Area.

3.4 FICO waives and releases all claims against the United States, the Nation and the San Xavier Allottees arising out of their withdrawal of water from beneath the San Xavier Reservation and other land of the Nation within the Tucson Management Area on or before the Enforceability Date.

3.5 FICO waives and releases all claims after the Enforceability Date against the United States, the Nation and the San Xavier Allottees to the extent that such claims arise out of their withdrawal of water as authorized under Amendments , and hereby confirms such parties' rights to withdraw water as authorized by said amendments.

ARTICLE 4

REMEDIES

4.1 The Party claiming any breach of this Agreement shall notify the offending party in writing of the alleged breach and provide the offending party a 60-day opportunity to cure prior to seeking any remedy hereunder.

4.2 The remedies of the Parties for breach of this Agreement shall be limited to equitable, declaratory and injunctive relief including avoidance of this Agreement and the waivers provided in Article 3 and shall not include the payment of damages.

ARTICLE 5

GENERAL

5.1 Notice required pursuant to the terms of this Agreement shall be in writing and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such Party set forth herein, or to such other address as shall have previously been specified in writing by such Party to all Parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P. O. Box 837
Sells, Arizona 85634

With copies to:

Attorney General
Tohono O'odham Nation
P. O. Box 1202
Sells, Arizona 85634

FICO:

Mr. Richard S. Walden
President
FARMERS INVESTMENT CO.
1525 Sahuarita Road
P.O. Box 7
Sahuarita, Arizona 85629

With a copy to:

Robert B. Hoffman
6035 North 45th Street
Paradise Valley, Arizona 85253-4001

San Xavier District:

Chairman San Xavier District Council
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Louis W. Barassi
Law Offices of Louis W. Barassi
485 S. Main Ave.
Tucson, Arizona 85701

San Xavier Allottees:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Thomas E. Luebben
Luebben, Johnson & Young LLP
211 12th Street NW
Albuquerque, New Mexico 87012

United States of America;

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

5.2 The Parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no Party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advice of independent counsel.

5.3 The Parties are aware of canons of interpretation where ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian Tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

5.4 This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the Parties. The lands described in Exhibit A hereto and the owners thereof shall benefit from Article 3 hereof unless and until the withdrawal

limitations of Article 2 are exceeded after the expiration of the cure period provided by paragraph 4.1 hereof. In order to carry out the intent of this paragraph, FICO shall record this Agreement in the official records of Pima County upon the occurrence of the Enforceability Date.

5.5 This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the Parties thereto, such counterparts taken together shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized, each of which shall be deemed an original document.

5.6 The Parties agree to cooperate with each other in effectuation this Agreement and carrying out its terms.

DATED this _____ day of _____, 2003.

TOHONO O'ODHAM NATION

By _____
Chairman

UNITED STATES OF AMERICA

By _____
Secretary of the Interior

SAN XAVIER DISTRICT

By _____
Chairman

FARMERS INVESTMENT CO.

By _____
President

STATE OF ARIZONA)
)SS
COUNTY OF _____)

The foregoing was acknowledged before me this _____ day of _____, 2003, by
_____, President of Farmers Investment Co.

Notary Public

My Commission expires:

FARMERS WATER CO.

By _____
President

STATE OF ARIZONA)
)SS
COUNTY OF _____)

The foregoing was acknowledged before me this _____ day of _____, 2003, by
_____, President of Farmers Water Co.

Notary Public

My Commission expires:

UNITED STATES V. TUCSON ALLOTTEE CLASS

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____
Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Counts 1 through 3)

By: _____

By: _____

By: _____

By: _____

By: _____
Its Class Representatives

EXHIBIT 16.2

STIPULATION AND

FORM OF CONDITIONAL ORDER OF DISMISSAL WITH PREJUDICE

- 1 Marvin S. Cohen (Bar No. 000923)
- 2 Judith M. Dworkin (Bar No. 010849)
- 3 SACKS TIERNEY P.A.
- 4 4250 North Drinkwater Boulevard, 4th Floor
- 5 Scottsdale, Arizona 85251
- 6 Telephone: (480) 425-2600
- 7 Attorneys for City of Tucson
- 8
- 9 David P. Frank (Bar No. 004440)
- 10 Office of Attorney General
- 11 Tohono O'odham Nation
- 12 P. O. Box 1202
- 13 Sells, Arizona 85634
- 14 Telephone: (520) 383-3410
- 15 Attorney for Tohono O'odham Nation
- 16
- 17 Thomas E. Luebben, Esq.
- 18 Richard L. Young, Esq.
- 19 LUEBBEN JOHNSON & YOUNG LLP
- 20 211 - 12th Street NW
- 21 Albuquerque, New Mexico 87102
- 22 Telephone: (505) 842-6123
- 23 Admitted to practice in this Court by certificates dated 2/13/90 and 7/17/91
- 24 Attorneys for Allottee Plaintiffs
- 25
- 26 Robert B. Hoffman, Esq. (Bar No. 004415)
- 27 SOMACH, SIMMONS & DUNN
- 28 6035 N. 45th Street
- Paradise Valley, AZ 85253
- Telephone: (602) 524-9459
- Attorney for Asarco Inc. and Farmers Investment Co.

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES, et al., Plaintiffs, v. CITY OF TUCSON, et. al., Defendants.	No. CV 75-039 TUC FRZ (Consolidated with CV No. 75-051) STIPULATION FOR DISMISSAL WITH PREJUDICE
FELICIA ALVAREZ, et al., Plaintiffs, v. CITY OF TUCSON, et al., Defendants.	No. CV 93-039 TUC FRZ STIPULATION FOR PARTIAL DISMISSAL WITH PREJUDICE
GERALD D. ADAMS, et al., Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants.	No. CV 93-240 TUC FRZ

The parties hereto, by and through their undersigned attorneys herewith stipulate to the dismissal with prejudice with each party to bear its own costs and attorneys' fees effective upon the date the Secretary of the Interior publishes findings under Section 316 of the SAWRSA Amendments, Public Law ____-____, ____ Stat. ____ (200_) of the following:

1. *United States v. Tucson*, Action No. CV 75-039 TUC FRZ (Consolidated with CV No. 75-051) in the United States District Court for the District of Arizona.

1 2. Count 1, Count 2, and Count 3 of *Alvarez v. Tucson*, Action No. CV 93-039
2 TUC FRZ in the United States District Court for the District of Arizona. This stipulation
3 shall not affect the remaining Count 4 and 5 of *Alvarez v. Tucson*.

4 Dated this ____ day of _____, 2003.
5

6
7 SACKS TIERNEY P.A.

8
9 By _____
10 Attorneys for City of Tucson

11 OFFICE OF THE ATTORNEY GENERAL

12
13 By _____
14 Attorney for Tohono O'odham Nation

15 LUEBBEN, JOHNSON & YOUNG

16
17 By _____
18 Attorneys for *United States v. City of*
19 *Tucson* Allottee Class
20 Attorneys for *Felicia Alvarez v. City of*
21 *Tucson* Allottee Classes

22 SOMACH, SIMMONS & DUNN

23
24 By: _____
25 Attorney for Asarco Incorporated and
26 Farmers Investment Co.
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2003, I filed the original of this Stipulation for Dismissal with Prejudice with the Clerk of the Court and mailed copies by first class mail, postage prepaid, to the counsel listed below:

Harlan Agnew, Esq.
Deputy County Attorney
Pima County Attorney's Office
Environmental Unit
32 North Stone, Suite 1500
Tucson, AZ 85701-1412

Michael J. Brophy, Esq.
RILEY, CARLOCK & APPLEWHITE
101 N. First Avenue, Suite 2600
Phoenix, AZ 85003-1973

S. Thomas Chandler, Esq.
CHANDLER, TULLAR, UDALL
& REDHAIR
33 N. Stone, Suite 1700
Tucson, AZ 85701

Graham M. Clark, Jr.
Assistant Attorney General
Natural Resources Section
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007-2926

Richard C. Cooledge, Esq.
BROWN & BAIN
P.O. Box 400
Phoenix, AZ 85001-0400

Michael A. Curtis, Esq.
MARTINEZ & CURTIS
2712 North 7th Street
Phoenix, AZ 85006-1003

- 1 E. Scott Dosek, Esq.
2 KUTAK ROCK
3 8601 N. Scottsdale Road, Suite 300
4 Scottsdale, AZ 85253
- 5 John Harris, Esq.
6 Papago Legal Services, Inc.
7 P.O. Box 295
8 Sells, AZ 85634
- 9 Gregg Houtz
10 Arizona Dept. Water Resources
11 500 N. 3rd Street
12 Phoenix, AZ 85004-3903
- 13 Daniel L. Jackson, Esq.
14 Department of Interior
15 Field Solicitor's Office
16 401 W. Washington St., SPC 44
17 Phoenix, AZ 85003-2151
- 18 M. Byron Lewis, Esq.
19 SALMON, LEWIS & WELDON
20 4444 N. 32nd Street, Suite 200
21 Phoenix, AZ 85018
- 22 Michael D. Miller, Esq.
23 Law Office of Michael D. Miller
24 2830 N. Swan Road, Suite 140
25 Tucson, AZ 85712-6301
- 26 Mark B. Raven, Esq.
27 STOMPOLY & STROUD
28 One South Church, Suite 1600
P.O. Box 3017
Tucson, AZ 85702-3017
- James Richard, Esq.
RICHARDS, BIRD, KUMP
333 East 400 South
Salt Lake City, UT 84111

SACKS TIERNEY P.A., LAWYERS
7047 EAST GREENWAY PARKWAY
SUITE 150
SCOTTSDALE, ARIZONA 85254-8109

1 Sylvia Sepulveda-Hambour
2 Department of Justice
3 Environmental Division
4 Suite 853
5 601 Pennsylvania Avenue NW
6 Washington, DC 20004

7 Patrick Barry
8 U.S. Department of Justice
9 Indian Resources Section
10 RM 6217
11 601 Pennsylvania Avenue NW
12 Washington, DC 20004

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EXHIBIT 17.1
STIPULATION
AND
JUDGMENT AND DECREE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION) No. W-1 (Salt)
OF ALL RIGHTS TO USE WATER IN THE) No. W-2 (Verde)
GILA RIVER SYSTEM AND SOURCE.) No. W-3 (Upper Gila)
) No. W-4 (San Pedro)
)
) CONTESTED CASE NO. _____
)
) STIPULATION AND REQUEST
) FOR ENTRY OF JUDGMENT
) AND DECREE
)
_____)

THIS STIPULATION, dated as of _____, 2003, is entered into among the attorneys for United States of America, the State of Arizona, the Tohono O'Odham Nation (hereinafter referred to as the "Nation"), the Allottees, the city of Tucson, Asarco Incorporated; and Farmers Investment Co.

WHEREAS,

1. Water rights claimed by the Nation and the Allottees, and the United States as trustee on behalf of the Nation and Allottees are to be permanently settled by agreement between the parties to this Stipulation. The terms of the Tohono O'Odham Settlement Agreement between the parties were ratified and approved by Congress in the Southern Arizona Water Rights Water Settlement Amendments Act of 2003, P.L. _____. A copy of the Tohono O'Odham Settlement Agreement is attached hereto as Exhibit 1 and by this reference incorporated herein.

2. Some of the water supplies that are the subject of the Tohono O'Odham Settlement Agreement between the parties are subject to the jurisdiction of this Court.

3. The parties to this Stipulation have submitted the Tohono O'Odham Settlement Agreement to this court for its approval pursuant to Section 301(a)(1)(E) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 and the Arizona

1 Supreme Court's Special Procedural Order Providing for the Approval of Federal Water
2 Rights Settlements, Including Those of Indian Tribes, dated May 16, 1991.

3 NOW, THEREFORE,

4 The parties to this Stipulation request that, upon this court's approval of the
5 Stipulation and Settlement Agreement, and upon the date the Secretary of the Interior
6 causes to be published in the Federal Register a statement of findings that the conditions set
7 forth in Section 301(a)(1) of the Southern Arizona Water Rights Settlement Amendments
8 Act of 2003 have occurred, the court enter the Judgment and Decree attached as Exhibit 2
9 hereto, fully, finally and permanently adjudicating the rights of the Nation and the
10 Allottees, and the United States as trustee on behalf of the Nation and the Allottees to the
11 water supplies within the Tucson Management Area as defined in the Tohono O'Odham
12 Settlement Agreement within the court's jurisdiction as provided by the terms of the
13 Tohono O'Odham Settlement Agreement.

14
15 RESPECTFULLY SUBMITTED this ____ day of _____, 2003.

16
17 ATTORNEYS FOR:

18 THE UNITED STATES OF AMERICA

19
20 By: _____

21
22 THE STATE OF ARIZONA

23
24 By: _____

25 TOHONO O'ODHAM NATION

26
27 By: _____

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ALLOTTEE CLASSES IN UNITED STATES
V. TUCSON AND ALVAREZ V. TUCSON

By: _____

CITY OF TUCSON

By: _____

ASARCO INCORPORATED

By: _____

FARMERS INVESTMENT CO.

By: _____